ANN

THE

Attorney's Practice

IN THE

Court of Common Pleas:

OR, AN

INTRODUCTION

TO THE

KNOWLEDGE of the PRACTICE of that COURT, as it now stands on the Regulation of several late ACTS of PARLIAMENT, RULES, and DETERMINATIONS of the said COURT.

WITH

Variety of useful and curious PRECEDENTS in *English*, drawn or perused by Counsel; and a Complete INDEX to the Whole.

By ROBERT RICHARDSON, Gent.

The Fifth Edition, with Large Additions.

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1778.



THE

Attorney's Practice

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Court of Common Pleas.

Abatement.

AND the ſaid *E.* in her proper perſon cometh and defendeth the force and injury, *&c.* And prayeth judgment of the ſaid writ, becauſe ſhe ſaith, that ſhe on the day of ſuing out the ſaid original writ of the ſaid *R.* was under cover of one *W. J.* then and yet her huſband, and alive, *to wit*, at *London* aforeſaid, in the pariſh and ward aforeſaid; And this ſhe is ready to verify: Wherefore for that the ſaid *W. J.* is not named in the ſaid writ, the ſaid *E.* prayeth judgment of the ſaid writ, and that the ſame may be quaſhed, *&c.*

Plea in abatement, deft. under coverture at the time of the writ.

And the ſaid *R.* ſaith, that for the reaſon before alledged his ſaid writ ought not to be quaſhed, becauſe he ſaith, that the ſaid *E.* on the day of ſuing out the ſaid original writ

Replication.

of the said *R. to wit*, on the first day of *February* in the —— year, &c at *London* aforesaid, in the parish and ward aforesaid, was sole, *Without this*, that the said *E.* on the day of suing out the said original writ of the said *R.* was under cover of the said *W. J.* as her husband, as the said *E.* hath above alledged: And this he is ready to verify: Wherefore for that the said *E.* doth not deny the said action of the said *R.* the said *R.* prayeth judgment and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c.

Traverse.

And the said *E.* as at first saith, that she on the day of suing out the said original writ of the said *R.* was under cover of the said *W.* as her husband, as she the said *E.* hath above alledged; and of this she putteth herself upon the country; *And* the said *R.* likewise, &c. *Therefore* it is commanded to the sheriff that he cause to come, &c.

Rejoinder.

Issue.

Another executor, nor named in the writ.

And the said *R.* by *R. R.* his attorney, cometh and defendeth the force, &c. And prayeth judgment of the said writ, because he saith, that the said *C.* in his life-time constituted and appointed him the said *R.* and one *W. C.* to be executors of his testament, and afterwards died, after whose death the said *W.* as executor of the testament of the said *C.* administered divers goods and chattels which were of the said *C.* at the time of his death, *to wit*, at *Westminster* in the county of *Middlesex* aforesaid, which said *W.* at *Westminster* aforesaid is still in being and alive; and this the said *R.* is ready to verify:

verify: Wherefore for that the said *W.* is not named in the writ aforesaid, the said *R.* prayeth judgment of the said writ, and that the said writ may be quashed, *&c.*

Replication.

And the said *T.* saith, that for the reason before alledged his said writ ought not to be quashed, because he saith, that the said *W.* after the death of the said *C.* as executor of the testament of the said *C.* never administered any goods or chattels which were of the said *C.* at the time of his death; and this he prayeth, *&c.*

Imparlance.

And now at this day, *to wit*, *Friday* next after the morrow of the holy *Trinity*, in this same term, to which day the said *P. D.* had leave to imparl, and then to answer, *&c.* before our lord the king at *Westminster* cometh as well the said *E. P.* by his said attorney, as the said *P.* by *J. G* his attorney, and the said *P.* defendeth the force and injury when, *&c.* And prayeth oyer of the said writing; and it is read to him in these words, *to wit*, To all, *&c.* Which being read and heard, the said *P.* prayeth judgment of the said original writ sued out against him, because he saith, that in the said writ there is material variance between the said writ and the said writing upon which the said declaration is founded, as to the court here sufficiently appeareth; and this he is ready to verify: Wherefore for that variance the said *P.* prayeth judgment of the said writ, and that the said writ may be quashed, *&c.*

Oyer.

Plea in abatement, variance between the declaration and deed.

Plea in abatement in case sur assumpsit, defendant infra ætatem.

And the said *W.* in his proper person cometh and defendeth the force and injury above laid to his charge, and prayeth judgment of the said writ, because he saith, that he the said *W.* now is within the age of 21 years, (that is to say) of the age of 18 years, and no more, and was at that age, and no more, at the time of making those promises and undertakings, as by the aforesaid declaration of the said *T.* in manner and form aforesaid is declared: Wherefore the said *W.* prayeth judgment of the said writ, and that the same may be quashed, *&c.*

Replication for necessaries.

And the said *T.* saith, he ought not to be precluded from his said action against him the said *W.* because he saith, that the said money so paid, laid out and expended, and the said several businesses by him the said *T.* done and performed for the said *W.* was necessarily paid, laid out, expended, done and performed for the necessary use and benefit of the said *W.* and in no other manner, as in the declaration of him the said *T.* in manner and form as above is declared: And this he prayeth may be inquired of by the country, *&c.*

Plea in abatement, misnomer in the defendant's christian name.

And John S. against whom the writ aforesaid issued by the name of *T. S.* in his proper person cometh and saith, that he was baptized by the name of *John*, and at the time of the said *A.*'s suing out the said original writ was, and always before and since hath been called and known by the said name of *John S.* that is to say, at *W.* aforesaid in the county of *M.* aforesaid; *without that,*

that

) that he at the time of the ſaid *A.'s* ſuing out his ſaid original writ, or any time before or ſince, hath been or now is called by the name of *Thomas S.* as by the ſaid writ is above ſuppoſed; and this he is ready to verify: Wherefore he prayeth judgment of the ſaid writ, and that the ſaid writ may be quaſhed, *&c.* *J. Burland.*

Plea in abatement the want of addition.

And the ſaid *Philip Beach* in his own perſon cometh and prayeth judgment of the original writ of the ſaid *Ambroſe*, becauſe he ſaith, that by the ſtatute of additions made and provided, every defendant in every writ in which proceſs of outlawry lieth, ought to be named and called in ſuch writ of a certain myſtery or degree, whereof ſuch defendant is, or at the time of obtaining ſuch writ was, or before had been; and this he is ready to verify: Wherefore, in as much as the ſaid *Philip* by the ſaid original writ is not called or named of any degree or myſtery whatſoever, he the ſaid *Philip* prayeth judgment of the ſaid writ, and that the ſame may be quaſhed, *&c.* *G. Wilſon.*

Plea in abatement, that defendant is a prothonotary's clerk, and ſuable by bill only, and not by writ.

And the ſaid *T.* in his proper perſon cometh and ſaith that he is, and long before the day of ſuing out the original writ of the ſaid *W.* and at the ſame time was, and ever ſince hath been one of the clerks of *G. C.* eſq; one of the prothonotaries of the court of our lord the king of the bench at *Weſtminſter* in the county of *Middleſex*, daily attending in his office in the ſame court; and that he

hath tranſacted, and doth tranſact in his ſaid office, divers affairs of the ſaid prothonotary, and of ſeveral ſubjects of our ſaid lord the king, and hath drawn and written, and doth draw and write divers pleas in the ſame office, and carries on other affairs of the ſaid prothonotary. And the ſaid *T.* further ſaith, that by laudable and ancient cuſtom, and according to the cuſtom and law of the land, and the liberties and privileges of the ſame court, for time paſt uſed and approved hitherto, it has obtained, that all clerks of the prothonotaries of the court of our lord the king of the bench, exerciſing any affairs in any office of the ſame prothonotaries in the ſame court, ought not, and have not for the whole time aforeſaid been uſed, according to the liberties and privileges of the ſame court of the bench aforeſaid, for the whole time aforeſaid uſed and approved, to be drawn or compelled other than in the ſame court of the bench, to anſwer before any ſecular judges, except before the juſtices of our lord the king of the ſame bench, by bill to be filed againſt ſuch clerk in the office of ſuch prothonotary, in which ſuch clerk is, upon any plea or plaints (pleas of freehold, felonies and appeals only excepted); And this the ſaid *T* is ready to verify: Wherefore he prays judgment, if he the ſaid *T.* ought to be compelled to anſwer to the ſaid declaration, not being a bill filed againſt him the ſaid *T.* in the office of the ſaid prothonotary, *&c.*

May

Maynard v. *Pippin.* *Trin.* 12 *W.*

Plea in replevin. property in a stranger Lilly's Ent. 358.

AND the said *E.* and *S.* by *W. L.* their attorney, come and defend the force and injury, when, *&c.* and say, that at the time in which the taking the said cattle is supposed to be done, the property of the said cattle was in one *S. H.* who is now in being and alive, *to wit*, at *H.* aforesaid, in the county aforesaid; *without this*, that the property of the said cattle at the time of the taking them, was in the said *J. M.* as he by his writ and declaration aforesaid above supposes; and this they are ready to verify: Wherefore they pray judgment of the said writ and declaration, and a return of the said cattle to be adjudged to them, *&c.* *And* for having a return of the said cattle, the said *E.* and *S.* bailiffs of *A. B.* and *C. B.* well acknowledge the taking the said cattle in the said place in which, *&c.* called *H.* and justly *&c.* because they say, that the said place called *H.* contains, and at the same time, in which the taking the said cattle is supposed to be done, contained in itself forty acres of pasture, with the appurtenances in *K.* in the county aforesaid; which said forty acres of pasture, with the appurtenances, are, and at the same time in which, *&c.* were the soil and freehold of the said *A. B.* and *C. B.* And because the said cattle at the said time in which, *&c.* were in the said place called *H.* aforesaid eating the grass then growing here, and doing damage there, the said *E.* and *S.*

Traverse.

Pro retorn. habend.

Cognizance as bailiff, damage feasant.

as bailiffs of the ſaid *A. B.* and *C. B.* well acknowledge the taking the ſaid cattle in the ſaid place in which, *&c.* and juſtly, *&c.* ſo doing damage there: Wherefore they pray judgment and a return of the ſaid cattle to be adjudged to them, *&c.*

Replication, property in plaintiff.

And the ſaid *J. M.* ſays, that his ſaid writ and declaration aforeſaid ought not to be quaſhed, becauſe he ſays, that the property of the ſaid cattle at the ſaid time of taking them was in the ſaid *J. M.* in manner and form as he by his ſaid writ and declaration has thereupon above alledged, *to wit*, at *H.* aforeſaid in the county aforeſaid; and he prays that this may be inquired of by the country; *And* the ſaid *E.* and *S.* do ſo likewiſe: It is therefore commanded to the ſheriff, that he cauſe to come, *&c.*

Iſſue.

Plea, that deft. is a baronet, and not a knight and baronet.

Lill. Ent. 5.

Salk. 50, 6.

Pract. Reg. 2, 3.

And the ſaid Sir *J. B.* by *J. L.* his attorney comes and defends the force and injury, *&c.* and prays judgment of the ſaid writ, becauſe he ſays, that he the ſaid Sir *J.* at the time of ſuing out the ſaid original writ, and from that time continually afterwards hitherto was, and yet is a baronet only, and not a knight and baronet: *Without* this, that he the ſaid Sir *J. B.* now is, or on the day of ſuing out the ſaid original writ was a knight and baronet, as by the ſaid original writ is above ſuppoſed; and this the ſaid Sir *J.* is ready to verify: Wherefore he prays judgment of the ſaid writ, and that the ſaid writ may be quaſhed, *&c.*

Plea, that defendants were not married.

And the ſaid *M.* and *E.* by *A. F.* their attorney, come and defend the force and in-

jury, and pray judgment of the ſaid writ of the ſaid *M.* becauſe they ſay, that on the day of ſuing out the ſaid original writ of the ſaid *M. to wit*, on the 23d day of *January* in the 17th year of the reign of our lord the now king, matrimony was not ſolemnized between the ſaid *M.* and *E.* according to the eccleſiaſtical law of this kingdom of *Great Britain*; and this they are ready to verify: Wherefore they pray judgment of that writ, and that the ſaid writ may be quaſhed, &c. *Naſh Groſs.*

according to the eccleſiaſtical law. Lill. Ent. 4.

See Andr. 227.

And the ſaid *J. C.* in his proper perſon comes and defends the force and injury, and ſays, that he long before the exhibiting the ſaid bill of the ſaid *D.* and at the ſame time, and continually afterwards, was and yet is one of the attornies of the court of our lord the king of the bench at *Weſtminſter* in the county of *Middleſex, as by proceſs under the ſeal of the ſame court to this plea annexed more fully appears*; and that he proſecutes and defends divers pleas and cauſes of divers and many ſubjects of our ſaid lord the preſent king in the ſame court of the bench aforeſaid, as their attorney there: And the ſaid *J.* ſays, that he and all other attornies of the ſame bench proſecuting and defending for their clients in the ſame court, by laudable and ancient cuſtom, and according to the law of this kingdom of *England*, and the liberties and privileges of the ſame court of the bench aforeſaid, from the time to the contrary whereof the memory of man is not, uſed

Plea that defendant is an attorney. Lill. Ent. 9.

used and approved, ought not, nor at any times past, have been accustomed, according to the liberties and privileges of the said court of the bench aforesaid for the whole time aforesaid used and approved, to be drawn or compelled against their will, to answer before any justices or ministers of our lord the king, or other justices whatsoever in any court, except before the justices of our lord the king of the bench aforesaid at *Westminster*, upon any pleas or plaints, (pleas of frank-tenements, and felonies, and appeals only excepted; and this he is ready to verify: Wherefore he prays judgment, if he ought to be compelled to answer the said *D.* to the said plea here in court, *&c.*

G. Hill.

Bar.

Hill. 17 *Geo.* 3.

Plea by an executrix.

AND the said *E.* by *W. D.* her attorney cometh and defendeth the wrong and injury, when, *&c.* and saith, that the said *J. P.* ought not to have or maintain his action aforesaid against her. *Because* she saith that she hath fully administred all the goods and chattels which were the said *S. W.*'s at the time of his death in her hands to be administred, nor had she any at the time of issuing the original writ of the said *J.* nor at any time since; and this the said [illegible] is

Plene administravit *generally.*

ready to verify: Wherefore she prayeth judgment, if the said *J. P.* ought to have or maintain his said action against her. And the said *E.* for a further plea in this behalf, by leave of the court here for this purpose first had and obtained by force of the statute in such cases made and provided, further saith, that the said *J. P.* ought not to have or maintain his said action against her, because she saith, that by a certain Indenture made at *B.* aforesaid, in the life time of the said *S.* *to wit*, upon the 19th day of *November* in the year of our Lord 1776, between the said *S.* by the name of *S. W.* of *W.* in the county of *N.* gent. of the first part, the said *E.* by the name of *E. O.* of *Mears Ashby* in the said county of *N.* widow. of the second part, and *R. H.* (who is since dead) and *T. G.* of the third part, reciting, that whereas a marriage was then shortly to be had and solemnized between the said *S.* and the said *E.* and that the said *E.* being then possessed of several goods, chattels and monies of a considerable value, and being desirous of securing the sum of 300*l.* of good and lawful money of *Great Britain*, to be disposed of according to her last will and testament, writing or otherwise, it was by the said indenture declared and agreed by and between all the said parties to the said indenture, that the said sum of 300*l* should, after the said indented marriage should take effect, be raised in a convenient time out of the goods and chattels of the said *S.* or the said *E.* and should be ordered

And a judgment recovered against her in an action of covenant.

The indenture.

dered and difpofed of, and be employed to fuch perfon or perfons, and to and for fuch ufe and ufes, intents and purpofes, as was thereafter mentioned and declared; (that is to fay) that the faid fum of 300*l.* as foon as raifed, fhould be put out at intereft, by the approbation of the faid *S.* and the faid *E.* during the joint lives of the faid *S.* and *E.* and that whenfoever the faid monies or any part thereof fhould be paid in, the faid monies fo paid fhould be put out again at intereft upon fuch fecurities as the faid *S.* and the faid *E.* fhould approve of, and that the fecurities to be taken for the fame fhould be made and taken in the names of the faid *R.* and *T. G.* in truft for the faid *E.* And it was thereby further declared and agreed by and between the faid parties to the faid indenture, and the faid *E.* did thereby declare and agree, that it fhould and might be lawful to and for the faid *S.* to have and receive the intereft of the faid fum of 300*l.* for the better livelihood and maintenance of the faid *S.* and *E.* and their family; and the faid *S.* did by the faid indenture for himfelf, his heirs, executors and adminiftrators, covenant, grant and agree to and with the faid *R.* and *T. G.* their executors and adminiftrators, and to and with every of them, that the faid fum of 300*l.* and every part thereof, fhould and might from time to time, and at all times after the death of the faid *E.* be paid unto, had, taken and received by fuch perfon or perfons to whom the faid *E.* fhould at any time or times during her

liv-

life-time limit, give, devise, order, appoint or dispose of the same, or any part or parts thereof, either by her last will and testament in writing, or by any other writing purporting to be her last will and testament, or otherwise; And it was by the said indenture further agreed and declared, that if it should happen that the said *E.* should survive the said *S.* her intended husband, that then and in such case, from and immediately after the death of the said *S.* the said sum of 300*l.* and every part thereof, should be accounted the proper monies and estate of the said *E.* and should and might be received and taken by her the said *E.* her executors and administrators, and should and might be employed and disposed of to such person and persons, and to and for such use and uses, intents and purposes, and in such manner and form as she the said *E.* should at any time or times then following during her life think good to limit, appoint, order, give, devise or dispose of the same, or any part or parts thereof, as by the said indenture more fully appeareth. *And* the said *E.* further saith, that afterwards, *to wit*, on the 1st day of *December* in the year last above mentioned, at *B.* aforesaid, the said marriage was had and solemnized between the said *S.* and the said *E.* and although the said *S.* afterwards, *to wit*, on the same day and year, at *B.* aforesaid, possessed himself of divers goods, chattels, and monies of a considerable value, *to wit*, of the value of 300*l.* which said goods, chattels and monies, at the time of his said intermarriage

Breach.

termarriage with the ſaid *E.* were the proper goods, chattels and monies of the ſaid *E.* yet the ſaid *E.* ſaith, that notwithſtanding the ſaid marriage took effect as aforeſaid, and the ſaid *S.* had poſſeſſed himſelf of the ſaid ſeveral goods, chattels and monies as aforeſaid, yet the ſaid ſum of 300*l.* or any part thereof, hath not hitherto been raiſed out of the goods and chattels of the ſaid *S.* nor of the ſaid *E.* nor otherwiſe raiſed and put out according to the form and effect of the ſaid agreement above mentioned and contained in the ſaid indenture in that reſpect. *And* thereupon, the ſame indenture remaining in full force and virtue not releaſed, and the ſaid 300*l.* or any part thereof, not paid, ſatisfied or diſcharged, and the ſaid *T. G.* having ſurvived the ſaid *R.* he the ſaid *T.* in *Hil.* term in the 16th year of the reign of his preſent majeſty, in the court of our ſaid lord the king of the bench here, to wit, at *W.* in the county of *M.* impleaded the ſaid *E.* by the name of *E. W.* late of *W.* in the ſaid county of *N.* widow and executrix of the laſt will and teſtament of *S. W.* gent. her late huſband, deceaſed, otherwiſe lately called *S. W.* of *W.* in the county of *N.* gent. in a plea, that ſhe keep with the ſaid *T.* the covenant made between the ſaid *S.* and the ſaid *R. H.* deceaſed, and the ſaid *T.* according to the force, form and effect of the indenture aforeſaid made between them and the ſaid *E.* *And* thereupon ſuch proceedings were had in the ſame court, that the ſaid *T.* in the ſaid *Hil.* term in the 16th year aforeſaid, before Sir

Action brought thereupon against defendant.

And judgment recovered.

Sir *J. W.* knt. and his companions justices of our said lord the king, of the bench aforesaid, at *W.* aforesaid, by judgment of the said court recovered against the said *E.* as executrix as aforesaid, 300 *l.* which were adjudged to the said *T* by the said court here for his damages which he had sustained by occasion of the said breach of covenant in that behalf to be levied of the goods and chattels which were the goods and chattels of the said *S.* at the time of his death, in the hands of the said *E.* unadministred, whereof she is convicted, as by the record and proceedings thereof now remaining in the said court of our said lord the king of the bench here, *to wit*, at *W.* aforesaid, more fully appeareth; which said judgment still remaineth in its full force, strength and virtue, not reversed nor vacated, nor any wise satisfied. *And* the said *E.* further saith, that she hath fully administred all the goods and chattels which were the said *S.*'s at the time of his death in her hands to be administred, except goods and chattels to the value of 5 *l.* and that she hath not, nor had at the time of suing out of the original writ of the said *J.* nor hath ever since had any goods and chattels which were the said *S.*'s at the time of his death in her hands to be administred, except the said goods and chattels to the value of the said 5 *l.* which are not sufficient to satisfy the said debt due on the said judgment as aforesaid, and which are subject and liable towards satisfaction thereof; and this the said *E.* is ready to verify: Wherefore she prayeth judgment,

Plene administravit præter.

judgment, if the ſaid *J.* ought to have or maintain his ſaid action againſt her, *&c.*

Wm. Whitaker.

And the ſaid *S.* by *G. B.* his attorney * cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *C.* ought not to have or maintain his aforeſaid action againſt him, becauſe he ſaith that the ſaid original writ of the ſaid *C.* was ſued out on the 23d of *April* in the 8th year of the reign, *&c.* and not before; and that he the ſaid *S.* at any time within ſix years next before the day of ſuing out the ſaid original bill, did not undertake in manner and form as the ſaid *C.* above hath declared againſt him; and this he is ready to verify: Whereupon he prayeth judgment, if the ſaid *C.* ought to have or maintain his aforeſaid action thereupon againſt him, *&c.*

Plea, Non aſſumpſit, Non aſſumpſit infra ſex annos, *that defendant was a bankrupt, and plaintiff's cauſe of action accrued before defendant became a bankrupt.*

And the ſaid *D.* by *T. B.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith, that he did not aſſume upon himſelf in manner and form as the ſaid *G.* above complaineth againſt him; and of this he putteth himſelf on the country. *And* the ſaid *G.* likewiſe, *&c.* *And* the ſaid *D.* by leave of this court, according to the form of the ſtatute in that caſe lately made and provided, further ſaith, that the ſaid *G.*

* Plea *Non aſſumpſit infra ſex annos.* Lord chief juſtice *Holt* ſaid, that the ſtatute of limitations was one of the beſt ſtatutes, and that the pleading thereof was no diſparagement to any body. 7 *Mod.* 12.

ought

ought not to have his said action against him the said *D.* because he saith that he the said *D.* did not assume upon himself in manner and form as the said *G.* above complaineth against him, at any time within six years next before the day of obtaining the said orinal writ of the said *G.* And this he is ready to verify: Wherefore he prayeth judgment, if the said *G.* ought to have his said action against him the said *D.* *And* the said *D.* by leave of this court, according to the form of the said statute in that case lately made and provided, further saith, that the said *G.* ought not to have his said action against the said *D* because he saith, that he the said *D.* since the 14th day of *May* in the year of our Lord 1729, mentioned in a certain act made in the parliament of his late majesty king *George* II. held by prorogation on the ——— day of ——— in the year of our Lord 17 intituled, *An act for the better preventing frauds committed by bankrupts*, and during the continuance of the said act, *to wit*, on the —— day of —— in the year of our Lord —— at *W.* aforesaid, became a bankrupt, within the intention and meaning of the several statutes made and in force against bankrupts: And the said *D* further saith, that the cause of the aforesaid action in the declaration aforesaid above specified, did accrue to the said *G.* before the time in which he the said *D.* did as aforesaid become bankrupt: And of this doth put himself upon the country: And the said *G.* likewise, *&c.*

Plea, Non aſſumpſit *by two defendants.*

And the ſaid *N.* and *J.* by *J. H.* their attorney come and defend the force and injury when, *&c.* and ſay, that they did not undertake in manner and form as the ſaid *J.* above complaineth againſt them: And of this they put themſelves upon the country:

Iſſue. Judgment by Nil dicit *againſt a third defendant.*

And the ſaid *J.* likewiſe, *&c.* *And* the ſaid *M.* by *H. H.* his attorney cometh and defendeth the force and injury when, *&c.* and ſayeth nothing in bar or preclusion of the aforeſaid action of the aforeſaid *J.* whereby the ſaid *J.* remaineth undefended by the ſaid *M.* by reaſon whereof the ſaid *J.* ought to recover againſt the ſaid *M.* his damages occaſioned by the non-performance of his ſaid promiſes and undertakings.

Unica taxatio.

But becauſe it is not known whether or no the ſaid *N.* and *I.* will be convicted of the premiſſes, and if they ſhall be convicted, it is convenient and neceſſary that there ſhould be only one taxation of damages for the whole premiſſes in one writ ſpecified, and thoſe damages ought to be ſettled by the jury of the country in that behalf, let the writ of inquiry of damages aforeſaid againſt the ſaid *M.* be ſtayed until the ſaid iſſue between the ſaid *J.* and the ſaid *N.* and *J.* ſhall be determined;

Venire tam ad triand' quam ad inquir'.

Therefore, as well to try the iſſue between the ſaid *J.* and the ſaid *N.* and *J.* above joined, as alſo to inquire what damages the ſaid *J.* hath ſuſtained by occaſion of the premiſſes aforeſaid, the ſheriff is commanded that he cauſe to come here
twelve free and lawful men of the body of his county, *&c.* by whom, *&c.* and who are

are not related to the ſaid *N. I.* or *M.* or to the ſaid *J.* to recognize, *&c.* becauſe as well, *&c.*

Plea in caſe Sur aſſump. re overy in a former action.

And the aforeſaid *J.* by *J. D.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith that the ſaid *T.* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith, that after the making the ſaid ſeveral promiſes and aſſumptions in the ſaid declaration mentioned, and before the day of obtaining the original writ of the ſaid *T.* *to wit*, in the term of St. *Michael* in the preſent year of the reign of the now king, before Sir *W. D.* knt. and his companions juſtices of our ſaid lord the king of the bench at *W.* by bill and without writ of the ſame king, and by the conſideration of the ſaid court, the ſaid *T.* recovered againſt the ſaid *J.* 60 *l.* for his damages which he had ſuſtained, as well by reaſon of the not performing the ſeveral promiſes and aſſumptions in the ſaid declaration above mentioned, as for his coſts and charges by him in his ſaid ſuit in that behalf laid out and expended, as by the record and proceſs thereof in the ſaid court of our ſaid lord the king of the bench at *W.* being and remaining fully appeareth; *And* the ſaid *J.* averreth, that the promiſes and aſſumptions in the ſaid record mentioned, and the promiſes and aſſumptions in the ſaid declaration above mentioned, are the ſame promiſes and aſſumptions, and not other or different, and made for the ſame conſiderations, and not for other or different; and this the ſaid *J.* is rea-

 dy

dy to juſtify: Whereupon he prayeth judgment, if the ſaid *T.* ought to have or maintain his ſaid action thereupon againſt him, *&c.*

Replication, Nul tiel rec.'

And the aforeſaid *T.* ſaith, that by any thing alledged by the ſaid *J.* in the above pleading, he ought not to be precluded from having his action aforeſaid againſt the ſaid *J.* becauſe he ſaith that there is not any ſuch record of the ſaid recovery againſt the ſaid *J.* at the ſuit of the ſaid *T.* as he the ſaid *J.* above in pleading hath alledged; And this he is ready to verify: Whereupon he prayeth judgment, and that his ſaid damages may be adjudged to him, *&c.*

Rejoinder, Quod habetur tale recordum.

And the aforeſaid *J.* faith, that there is ſuch record of the ſaid judgment, as the ſaid *J.* above in pleading hath alledged: And this he is ready to verify by the ſaid record, and prayeth that the ſaid record may be ſeen and inſpected by the juſtices here. *And* because the ſaid record is not now to be had here in court, *It is commanded* the ſaid *J.* that he have here the ſaid record on —— —— at his own peril, *&c.* The ſame day is given as well to the ſaid *T.* as to the ſaid *J.* here, *&c.* *At which day* come here as well the ſaid *T.* as the ſaid *J.* by their ſaid attornies; and the ſaid *J.* hath not here the ſaid record, but maketh default; whereby it ſufficiently appeareth to the juſtices here, that there is not any ſuch record of the ſaid recovery as the ſaid *J.* hath alledged: *Wherefore, &c.*

Day to bring in the record.

Defendant de fecit de recordo.

Plea in caſe Sur aſſump. *recovery in another action.*

And the ſaid *M.* by *J. B.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith, that the ſaid *R. C.*

 his

his action thereof againſt the ſaid *M.* ought not to have, becauſe he ſaith, that he the ſaid *R.* heretofore, that is to ſay, in *Mich.* term in the 17th year of the reign of our now lord the king impleaded the ſaid *M.* in his ſaid majeſty's court of Exchequer before the barons of the ſaid Exchequer (the ſaid court of Exchequer being at that time, and ſtill is, at *W.* in the county of *M.*) in a certain plea of treſpaſs upon the caſe upon promiſe for not performing the ſame promiſes and undertakings mentioned in the ſaid declaration, and ſuch proceedings were had thereupon in the ſaid court of Exchequer, that the ſaid *R. C.* afterwards, *to wit*, in the ſame *Mich.* term in the year aforeſaid, by the conſideration of the ſaid court of Exchequer, recovered againſt the ſaid *M.* 93 *l.* which to the ſaid *R. C.* in the ſaid court of Exchequer were adjudged for his damages which he ſuſtained, as well on occaſion of not performing the ſame promiſes and undertakings as are mentioned in the above declaration, as for his coſts and charges by him about his ſuit in that behalf laid out, whereof the ſaid *M.* is convicted, as by the record and proceedings thereof (which our now lord the king, by virtue of his majeſty's writ of error by the ſaid *M.* proſecuted of and upon the premiſſes, hath lately cauſed to be brought in his ſaid majeſty's court of Exchequer chamber at *W.* there to be determined, and which ſtill in the ſaid court of Exchequer remains undetermined) more at

 large

large appeareth, which said judgment still remaineth in its full strength and effect, not in the least reversed, satisfied or annihilated; And this he is ready to verify by that record: Whereof he prayeth judgment, if the said *R. C.* his said action therefore against him ought to have. &c.

In ejectment, upon the demise of *J. B.* the defendants pleaded Not guilty; and this plea was prepared at the assizes, but the plaintiff did not proceed, and the plea was not offered.

Plea, Puis darrein cont *in ejectment a release from the lessor of the plaintiff.*

And the said *T. B.* and *J. H.* in their proper persons come and say, that the justices of our sovereign lady the queen here ought not to proceed to take the jury aforesaid between the said defendants and the said plaintiff, because they say, after the last continuance of the said plea, *to wit*, after from which the said plaint was last continued here, until this day, *to wit*, on the 18th day of *July* last past, and before the same 18th day of *July*, *to wit*, on the 17th day of *July* last past, the said *J. B.* by the name of *J. B.* of *E. W.* in the parish of *E.* in the county of *York*, by his writing sealed with the seal of the said *J.* bearing date the same 17th day of *July* at —— aforesaid, remised and released to the said *T.* and *J.* and their heirs, all his estate, right and title of and in the said messuages, lands and tenements in the said declaration mentioned, and also all and all manner of actions and causes of action whatsoever of and concerning the said premisses, or any part

part thereof; And this they are ready to verify, *&c.* Wherefore they pray that the ſaid juſtices will not proceed further to take the ſaid jury, with this, that the ſaid *T.* and *J.* will verify that the ſaid *J. J.* is made and named plaintiff in the ſame action only to try the title of the ſaid *J. B.* to the ſaid tenements.

Plea, outlawry in the plaintiff.

And the ſaid *T.* by *F. K.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith, that the ſaid *J.* ought not to have his aforeſaid action againſt him the ſaid *T.* thereon, becauſe he ſaith that one *C. T.* heretofore (that is to ſay) in *Eaſter* term in the 5th year of the reign of his preſent majeſty, by an original writ impleaded the ſaid *J.* by the name of *J. H.* late of *London*, gent. in the court of the ſaid now king, before the king himſelf (the ſaid court then and ſtill being at *W.* in the county of *M.*) in a plea of treſpaſs; and the ſaid *T.* becauſe he did not appear in his ſaid majeſty's court before the king himſelf, to anſwer unto the ſaid *C.* in the aforeſaid plea, according to the law and cuſtoms of this realm, was put in exigent to be outlawed in *London*, and for that reaſon afterwards, *to wit*, on *Monday* next before the feaſt of the purification of the bleſſed Virgin *Mary* in the 17th year of the reign of his preſent majeſty, in the ſaid court of our ſaid lord the now king, before the king himſelf, was outlawed in due form of law at the ſuit of the ſaid *C.* in the aforeſaid plea, and ſtill remaineth outlawed, as by the records and proceedings

 thereof

thereof in his said majesty's court, before the king himself at *W.* aforesaid, returned and now there remaining, may more fully appear; And this he is ready to verify by the said record: Wherefore he prayeth judgment, whether the said *J.* ought to have his said action therefore against him, *&c.*

Replication, Nul tiel rec'.

And the said *J.* saith, that he by any thing by the said *T.* in his plea above alledged, ought not to be barred from his said action against him, because he saith that there is not any such record of outlawry in his said majesty's court, before the king himself, as the said *T.* by his said plea hath alledged; And this he is ready to verify in such manner as the court shall award. *And* the said *T.* is commanded that he have the record here on the morrow of the ascension of our Lord at his peril; And the same day is given to the said *J.* here, *&c.* *At which day* here come as well as the said *J.* as the said *T.* by their attornies aforesaid; and the said *T.* hath not here the said record, but maketh default thereof: *Wherefore* the said *J.* ought to recover, *&c.*

Day to bring in the record.

Defendant defecit de recordo.

Plea, the statute of frauds; no memorandum in writing.

And the said *G.* by *R. B.* his attorney cometh and defendeth the force and injury when, *&c* and saith, that the said *J.* ought not to have his said action against him, because he saith that there is not, nor ever was any memorandum or note in writing of the said promise and undertaking above supposed to be made and signed by the said *G.* or any other person thereunto by him lawfully authorized, according to the form of the

the ſtatute for preventing frauds and perjuries in ſuch caſe lately made and provided; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *J.* ought to have his ſaid action againſt him, *&c.*

Plea ſetting off a debt.

And the ſaid *W. T.* by *W. S.* his attorney cometh and defendeth the force and injury when, *&c.* and ſaith, that the ſaid *J.* and *S.* ought not to have their ſaid action againſt him, becauſe he ſaith that the ſaid *J.* and *S.* at the time of ſuing out the original of the ſaid *J.* and *S.* were and now are indebted to the ſaid *W. T.* in the ſum of 50 *l.* for meat, drink, waſhing, lodging, apparel, and other neceſſaries found and provided by the ſaid *W. T.* for the ſaid *S.* while ſhe was ſole, at her ſpecial inſtance and requeſt; and alſo in the further ſum of 50 *l.* for divers goods, wares and merchandizes ſold and delivered by the ſaid *W. T.* to the ſaid *S.* while ſhe was ſole, at her like inſtance and requeſt; and alſo in the further ſum of 50 *l.* as well for money by the ſaid *W. T.* to the ſaid *S.* while ſhe was ſole, at her requeſt lent and advanced, as for money to the uſe of the ſaid *S.* while ſhe was ſole, at her like requeſt expended, paid and laid out, and for money by the ſaid *S.* while ſhe was ſole, of the ſaid *W. T.* had and received; and alſo in the further ſum of 50 *l.* as well for divers work, labour, care and diligence of the ſaid *W. T.* by himſelf, his ſervants and horſes, for and at the like requeſt of the ſaid *S.* while ſhe was ſole, in and about her lawful buſineſs done and performed, as for depaſturing, feeding

feeding and grazing certain cattle of the ſaid *S.* while ſhe was ſole, at her like requeſt depaſtured fed and grazed by the ſaid *W. T.* which ſaid ſeveral ſums of 50, 50, 50 and 50 *l.* amount in the whole to the ſum of 200 *l.* and are ſtill due and unpaid to the ſaid *W. T.* And the ſaid *W. T.* further ſaith, that he has been, and ſtill is ready, and doth now offer (according to the form of the ſtatute in this behalf made and provided) to ſet off againſt the money which in and by this ſuit ſhall appear to be due to the ſaid *J.* and *S.* ſo much of the ſaid 200 *l.* ſo as aforeſaid due to him the ſaid *W. T.* as ſhall ſatisfy ſuch money as appeareth to be due to the ſaid *J.* and *S.* as aforeſaid; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *J.* and *S* ought to have their ſaid action againſt him

Tho. Walker.

Plea, ſetting ſeveral ſums againſt plaintiff [illegible]

And the ſaid *J.* in his proper perſon cometh and defendeth the force and injury when, &c. and ſaith that the ſaid *J.* ought not to have or maintain his ſaid action againſt him, *becauſe* he ſaith that the ſaid *J.* on the day of ſuing out his ſaid original writ againſt the ſaid *J. to wit,* the 30th day of *May* in the year aforeſaid, at *W.* aforeſaid in the county aforeſaid, was and yet is indebted unto the ſaid *J.* in the ſum of 105 *l.* of lawful money of *G. B.* in the manner herein after mentioned; that is to ſay, the ſaid *J.* on the 29th day of *May* in the year of our Lord 1776, at *W.* in the county aforeſaid,

ſaid, made a certain promiſſory note in writing, and ſubſcribed his name thereto, which ſaid note beareth date the ſame day and year, whereby the ſaid *J.* promiſed to pay to the ſaid *J.* or order 144 *l.* ten days after date thereof, for value received by the ſaid *J.* of the ſaid *J.* And the ſaid *J.* averreth that he made no order for the payment of the ſaid note on the ſaid *J.* but acknowledgeth that the ſaid *J.* hath paid him the ſum of 110 *l.* part of the ſaid note, and the remaining 34 *l* other part, ſo due and payable from the ſaid *J* by the ſaid note to the ſaid *J.* ſtill remaineth juſtly due and payable to him; *And alſo* the ſaid *J.* afterwards, *to wit*, the 24th day of *July* in the year laſt mentioned, at *W* aforeſaid in the county aforeſaid, made another promiſſory note in writing, and ſubſcribed his name thereto, which ſaid laſt mentioned note beareth date the ſame day, by which ſaid laſt mentioned note the ſaid *J.* in ſix weeks after date thereof promiſed to pay to the ſaid *J.* or order, 40 *l.* for value received by the ſaid *J* of the ſaid *J.* and the ſaid *J.* averreth that the ſaid ſum of money mentioned in the ſaid laſt mentioned note, or any part thereof, hath not been paid to him, and that he the ſaid *J.* hath not made any order for the payment thereof to any other perſon or perſons whatſoever, but the ſame note ſtill remaineth in his hands unpaid and unſatisfied; *And alſo* the ſaid *J.* on the ſaid 30th day of *May* in the year of our Lord 1777 at *W.* aforeſaid, in the county aforeſaid, was and yet is indebted

debted to the ſaid *J.* in the ſum of 31 *l.* of lawful money of *G. B.* as well for money before that time expended, laid out and paid, in the ſoliciting, proſecuting, carrying on and defending of ſeveral ſuits at law and in equity in his preſent majeſty's courts of Exchequer-chamber, King's bench and Common bench at *W.* as for the ſaid *J.*'s fees, care and diligence, in ſoliciting, proſecuting, carrying on and defending the ſame for the ſaid *J.* by the ſaid *J.* and at the ſpecial inſtance and requeſt of the ſaid *J.* as alſo for money lent and paid to the ſaid *J.* by the ſaid *J.* at the like ſpecial inſtance and requeſt of the ſaid *J.* *Which* ſaid ſeveral ſums of 34 *l.* 40 *l.* and 31 *l.* ſo due and owing to the ſaid *J.* from the ſaid *J.* as aforeſaid, amount in the whole to the ſum of 105 *l.* *And* the ſaid *J.* is ready, and now offereth to ſet againſt the demands of the ſaid *J.* ſo much thereof as is ſufficient to ſatisfy his ſaid demands in this action, according to the form of the ſtatutes in that caſe lately made and provided; And this he is ready to verify: Wherefore he prayeth judgment, and that the ſaid *J.* may be barred from having his ſaid action againſt him, *&c.*

Wm. Davy.

Mich. 14 *Geo.* 3.

W. R. againſt *R. B.* Debt on a bond for 200 *l.* dated 24 *Nov.* 10 *Geo.* 3.

AND now here at this day, *to wit*, on the octaves of St. *Hilary* in this ſame term, until which day the ſaid *Richard* had licence to imparl, and then to anſwer, *&c.* comes as well the ſaid *William* by his attorney aforeſaid, as the ſaid *Richard by Roger Altham* his attorney, and the ſaid *Richard* defendeth the force and injury, when, *&c.* and prayeth oyer of the writing aforeſaid; and it is read to him; he likewiſe prayeth oyer of the condition of the ſaid writing; and it is read to him in theſe words, *to wit*, The condition of this obligation is ſuch, that if the above bounden *Richard B.* his heirs, executors, adminiſtrators or aſſigns, ſhall and do well and truly pay, or cauſe to be paid unto the above named *William R.* his executors, adminiſtrators or aſſigns, the full ſum of 100 *l.* of good and lawful money of *Great Britain*, with lawful intereſt for the ſame, on or before the 24th day of *May* next, without fraud or further delay; then this obligation to be void, and of none effect, or elſe to remain in full force and virtue; which being read and heard, the ſaid *Richard* ſaith, that the ſaid *William* ought not to have or maintain his ſaid action thereof againſt

Imparlance.

Oyer prayed of the bond, and of the condition.

The condition.

Bar.

What due on the bond.

against him; because he saith, that at the time of exhibiting the said bill of the said *William* against the said *Richard*, there was due to the said *William* upon and by virtue of the said writing obligatory, the whole principal sum of 100*l.* mentioned in the condition of the said writing obligatory, and the sum of 19*l.* 12*s.* 5*d.* $\frac{3}{4}$ for the interest thereof, and no more, *to wit*, at *London* aforesaid, in the parish and ward aforesaid. And the said *Richard* further saith, that the said *William* at the time of his exhibiting the said bill against him the said *Richard*, and before, at *London* aforesaid in the parish and ward aforesaid, was and still is indebted to the said *Richard* in a larger sum of money than the monies due from the said *Richard* to the said *William*, upon the said writing obligatory by the condition thereof, *to wit*, in the sum of 148*l.* 15*s.* of lawful money of *Great Britain*, for 600 acres of standing wheat before then sold by the said *Richard* to the said *William*, and at the special instance and request of the said *William*; and in the further sum of 148*l.* 15*s.* of the like lawful money, for divers goods, wares and merchandizes before then sold and delivered by the said *Richard* to the said *William*, at the special instance and request of the said *William*; which said sums of 148*l.* 15*s.* and 148*l.* 15*s.* do amount together to the sum of 297*l.* 10*s.* of like lawful money; which sum of 297*l.* 10*s.* exceeds the said principal

That plaintiff indebted to defendant in a large sum,

for wheat sold.

And for goods, wares and merchandizes sold and delivered.

cipal and intereſt ſo due on the ſaid writing obligatory mentioned in the ſaid declaration from the ſaid *Richard* to the ſaid *William*; and out of which ſum of 297 *l.* 10 *s.* the ſaid *Richard* is willing and hereby offereth to allow to the ſaid *William*, all the principal and intereſt due to the ſaid *William* on the ſaid writing obligatory, according to the form of the ſtatute in ſuch caſe made and provided; And this he is ready to verify: Wherefore he prayeth judgment whether the ſaid *William* ought to have or maintain his ſaid action thereof againſt him, *&c.*

Joſeph Sayer.

Replication in not indebted.

And the ſaid *William* ſaith, that by reaſon of any thing by the aforeſaid *Richard* in pleading above alledged, he ought not to be barred from having his ſaid action againſt the ſaid *Richard*, becauſe he ſaith, that he the ſaid *William* at the time of ſuing out his ſaid writ againſt the ſaid *Richard*, was not nor is indebted to the ſaid *Richard* in the aforeſaid ſeveral ſums of money, or either of them, or any part thereof, in manner and form as the ſaid *Richard* hath in pleading above alledged; And this he prayeth may be inquired of by the country, *&c.*

John Glyn.

Plea non aſſumpſit.

And the ſaid *J. M.* by *W. M.* her attorney, cometh and defendeth the wrong and injury, when, *&c.* and ſaith, that ſhe did not undertake and promiſe in manner and form as the ſaid *T. P.* above declareth againſt her;

her; and of this she putteth herself upon the country, &c. And the said *Thomas* doth the like, &c. And the said *J.* by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, further saith, That the said *Thomas* ought not to have his said action against her, because she saith, that she did not promise or undertake in manner and form as the said *Thomas* hath above complained against her, at any time within six years next before the day of suing out the aforesaid writ of him the said *Thomas*; And this she is ready to verify: Wherefore she prayeth judgment if the said *Thomas* ought to have or maintain his aforesaid action against her, &c. *And* for further plea in this behalf the said *J.* by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case lately made and provided, saith, that the said *Thomas* ought not to have or maintain his aforesaid action against her, because she saith, that the said *J. P.* in his life-time, and at the time of his decease, was indebted to the said *J.* and the said *Thomas* as executor of the last will and testament of the said *J.* as aforesaid, at the time of exhibiting the bill aforesaid, was and still is indebted to the said *J.* in more money than is due or owing from her the said *J.* to the said *Thomas P.* as executor as aforesaid, upon or by reason of the several promises and undertakings in the said declaration mentioned; that

Issue.

Second plea non assumpsit infra sex annos.

Third plea of mutual debts owing from plaintiff's testator, and plaintiff as his executor, to defendant.

that is to say, in the sum of 400 *l.* of lawful money of *Great Britain*, for so much money before that time lent and advanced by the said *J.* to the said *J.* in his life-time, at his request: And also in the further sum of 300 *l.* of like lawful money, for so much money before that time paid, laid out and expended by the said *J.* for the said *J.* in his life-time, at his request: And also in the further sum of 400 *l.* of like lawful money, for so much money before that time had and received by the said *J.* in his life-time, for the use of the said *J.* And also in the further sum of 200 *l.* for work and labour performed and done by the said *J.* and her servants, for the said *J. P.* in his life-time, at his special instance and request, that is to say, at *H.* aforesaid; which said several sums of money are still unpaid to the said *J* and exceed the money due and owing from the said *J.* to the said *Thomas P.* as executor as aforesaid, upon or by reason of the said several promises and undertakings in the said declaration mentioned, *to wit*, at *H.* aforesaid; and the said *J.* is ready, and now offereth to set off so much of the said several sums so due and owing to the said *J.* as aforesaid, as is sufficient to satisfy the money or damages justly due or payable to the said *Thomas* as executor, as aforesaid, by reason of the said several promises in the said declaration mentioned; And this the said *J.* is ready to verify: And therefore prayeth judgment if the said *Tho-*

mas ought to have or maintain his ſaid action againſt her, *&c.* *J. Y.*

Replication quod aſſumpſit infra ſex annos.

And the ſaid *Thomas*, as to the ſaid plea of the ſaid *J.* by her ſecondly above pleaded in bar, ſaith, that notwithſtanding any thing by the ſaid *J.* in that plea above alledged, he ought not to be barred from having his ſaid action againſt her, becauſe he ſaith, that the ſaid *J.* did promiſe and undertake in manner and form as the ſaid *Thomas* hath above complained againſt her, within ſix years next before the day of ſuing out the ſaid writ of the ſaid *Thomas*, *to wit*, at *H.* aforeſaid; And this he prayeth may be inquired of by the country: *And* the ſaid *J.* doth the like.

Iſſue.

Replication (proteſtando *that the teſtator was not indebted*, &c.) *that plaintiff as executor is not indebted to defendant in more than is due from her to plaintiff as executor.*

And the ſaid *Thomas*, as to the ſaid plea of the ſaid *J.* by her laſtly above pleaded in bar ſaith, that notwithſtanding any thing by the ſaid *J.* in that plea above alledged, he ought not to be barred from having and maintaining his ſaid action againſt her, becauſe proteſting that the ſaid *J. P.* in his life-time, and at the time of his death, was not indebted to the ſaid *J.* in manner and form as the ſaid *J.* hath in and by her ſaid plea above alledged; Nevertheleſs for replication the ſaid *Thomas* ſays, that he the ſaid *Thomas*, as executor of the laſt will and teſtament of the ſaid *J.* was not nor is indebted to the ſaid *J.* in more money than is due and owing from her the ſaid *J.* to the ſaid *Thomas* as executor, as aforeſaid, upon the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned,

troned, as the said *J.* hath in and by her said plea in that behalf above alledged; And this he prayeth may be inquired of by the country; *And* the said *J.* doth the like, &c. *Therefore* as well to try this issue, as the said several other issues between the said parties above joined, &c.

Issue.

Venire *awarded.*

And the aforesaid *S.* by *M. H.* his attorney cometh and defendeth the force and injury, when, &c. *And* prayeth oyer of the writing obligatory aforesaid; and it is read to him: He prayeth also oyer of the condition of the same writing obligatory; and it is read to him in these words, *to wit*, The condition, &c. *Which* being heard and read, the aforesaid *S.* saith, that he by virtue of the writing obligatory aforesaid ought not to be charged with the debt aforesaid, because he saith, that after the 29th day of *September* in the year of our Lord 1714, *to wit*, on the aforesaid 17th day of *August* in the year of our Lord 1774, aforesaid, at *W.* aforesaid, it was corruptly agreed between the aforesaid *J.* and the said *S.* that the said *J.* should lend to the said *S.* the sum of 20 *l.* and should forbear and gave a day of payment thereof until the 12th day of *November* next ensuing; and that the said *S.* for the loan of the said 20 *l.* and for the forbearance and giving a day of payment thereof for the time aforesaid, should give and pay to the said *J.* the sum of 20 *s.* a month; and that the said *S.* should become bound to the said *J.* in a certain writing obligatory, as a security to the said *J.* for the payment

Plea in debt on a bond.

Oyer.

The statute of usury.

 of

of the ſaid ſum of 20 *l.* according to the form and effect of the corrupt agreement aforeſaid; and afterwards, *to wit*, on the aforeſaid 17th day of *Auguſt* in the year of our Lord 1734, aforeſaid, at *W.* aforeſaid, the aforeſaid *J.* in proſecution of the corrupt agreement aforeſaid, did lend to the aforeſaid *S.* the aforeſaid ſum of 20 *l.* and the aforeſaid writing obligatory, in the declaration aforeſaid above mentioned, was thereupon then and there by the ſaid *S.* ſealed and delivered to the ſaid *J.* as the deed of the ſaid *S.* as a ſecurity for the payment of the ſaid ſum of 20 *l.* ſo lent according to the form and effect of the corrupt agreement aforeſaid, and the ſaid *S.* in performance and according to the form and effect of the aforeſaid corrupt agreement, afterwards, *to wit*, on the 15th day of *November* in the year of our Lord 1774, aboveſaid, at *W.* aforeſaid, paid to the ſaid *J.* the ſum of 20 *s.* a month for the loan and forbearance of the aforeſaid 20 *l.* until the aforeſaid 12th day of *November*; and the ſaid *J.* then and there took and accepted of the ſaid *S.* the ſaid ſum of 20 *s.* a month for the loan and forbearance of the aforeſaid 20 *l.* until the ſaid 12th day of *November*, which ſaid 20 *s.* a month for the loan and forbearance of the ſaid 20 *l.* for the ſaid time, exceedeth the rate of 5 *l.* for the forbearance of 100 *l.* for a year, contrary to the form of the ſtatute in ſuch caſe made and provided, whereby the writing obligatory in the declaration aforeſaid above mentioned, by force and virtue

of the above ſtatute in ſuch caſe made and provided, is void in law; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *S.* by virtue of the writing obligatory aforeſaid, ought to be charged with the debt aforeſaid, *&c.*

Replication. Lil. Ent. 184.

And the ſaid *J.* ſaith, that he by any thing before alledged ought not to be barred from having his ſaid action againſt the ſaid *S.* becauſe he ſaith that it was not corruptly agreed between the aforeſaid *J.* and the ſaid *S.* in manner and form as the ſaid *S.* hath above in pleading alledged: And this he prayeth may be inquired of by the country, *&c.* *And* the ſaid *S.* doth the like. *Therefore*, &c.

Plea in debt on a bond, that the obligor was non compos mentis.

And the ſaid *A. D.* by *P. L.* her attorney cometh and defendeth the force and injury, when, *&c.* and ſaith that ſhe ought not to be charged with the ſaid debt by virtue of the writing aforeſaid, becauſe ſhe ſaith, that the ſaid *E. D.* at the time of the ſealing and delivering the ſaid writing mentioned in the ſaid declaration, was not of ſound mind, but was *non compos mentis*; And this ſhe is ready to verify: Wherefore ſhe prayeth judgment, if ſhe ought to be charged with the ſaid debt by virtue of the writing aforeſaid, *&c.*

Replication.

And the ſaid *F. N.* ſaith that he, by any thing before alledged by the ſaid *A. D.* in pleading, ought not to be precluded from having or maintaining his aforeſaid action thereupon againſt her the ſaid *A. D.* becauſe he ſaith that the ſaid *E. D.* at the time of the ſealing and delivering of the ſaid writing

 men-

mentioned in the ſaid declaration, was of ſound mind, and was *compos mentis*, *to wit*, on the —— day of ——, in the year of our Lord 1777, aforeſaid, in the county aforeſaid: and this he prayeth may be inquired of by the country; *And* the ſaid *A.* likewiſe. *Therefore*, &c.

Plea by an heir, in debt on a bond, no lands deſcended.

And the ſaid *W. H.* by *C. S.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith, that he as ſon and heir of the ſaid *G.* his father, by virtue of the ſaid writing ought not to be charged with the ſaid debt, becauſe he ſaith that he the ſaid *W.* on or before the day of ſuing out the original writ of the ſaid *T.* had not any lands or tenements by hereditary deſcent from the ſaid *G.* his father in the fee-ſimple; And this he is ready to verify: Wherefore he prayeth judgment, if he as ſon and heir of the ſaid *G.* his father, by virtue of the ſaid writing ought to be charged with the ſaid debt, *&c.*

Replication.

And the ſaid *T. H.* ſaith, that he by any thing in the ſaid plea alledged ought not to be barred from having his ſaid action againſt the ſaid *W.* becauſe he ſaith that the ſaid *W.* on or before the day of ſuing out the ſaid original writ of the ſaid *T.* had ſeveral lands and tenements by hereditary deſcent from the ſaid *G.* his father in fee-ſimple, *to wit*, in the county of *Lincoln*, aforeſaid; And this he prayeth may be inquired of by the country: *And* the ſaid *W.* likewiſe.

Plea, in debt on a bond, de-

And the ſaid *E.* by *G. N.* his attorney cometh and defendeth the force and injury, when,

when, &c. and saith that the said T. ought not to have his aforesaid action against him, because he saith that he the said E. is not devisee of the said G. of any lands or tenements of the said G. whereof the said G. at the time of his decease was seised in fee-simple in possession, reversion or remainder, or had power to dispose of the same by his last will or testament; And this he is ready to verify: Whereupon he prayeth judgment, if the said T. ought to have his aforesaid action against him, &c.

fendant is not devisee.

And the said T. H. as to the aforesaid plea of the said E. H. by him above pleaded in bar, saith, that he by any thing therein alledged ought not to be barred from having his said action against the said E. because he saith that he the said E. is devisee of the said G. of several lands and tenements of the said G. whereof the said G. was seised in fee-simple, *to wit*, in the county of L. aforesaid: And this he prayeth may be inquired, &c.

Replication.

And the said J. M. by ——— his attorney cometh and defendeth the force and injury, when, &c. and saith that the said J. R. ought not to have or maintain his said action thereupon against him, because he saith that he ought not to be charged with the said debt by virtue of the said writing obligatory, because he saith that he the said J. M. on the 27th day of *May* in the 12th year of the reign of our late sovereign lord *William* III. late king of *England*, &c. at *London* aforesaid, in the parish of *St. Mary le Bow* in the ward of *Cheap*, made and sealed the

Plea, bond delivered as an escrow, upon condition. Lil Ent. 186. 1 Inst. 303. 9 Co. 137. 1 Salk. 274. Pract. Reg. 317, 540.

ſaid writing, and then and there delivered it to one *E. B.* as an eſcrow, to be ſafely kept, upon the condition following, *to wit*, that if the ſaid *J. R.* upon the 20th day of *June* in the year aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, ſhould deliver to one *S. B.* one hundred yards of woollen cloth called kerſeys, and two hundred yards of linen cloth in good and merchandizable condition, to be exported by the ſaid *S.* in the ſhip called the *Fiſher*, to *Virginia* in parts beyond the ſeas, that then the ſaid *J. M.* ſhould deliver the ſaid writing obligatory to the ſaid *J. R.* as the deed of the ſaid *J. M.* otherwiſe not. *And* the ſaid *J. M.* ſaith, that the ſaid *J. R.* upon the 20th day of *June* in the year aforeſaid, did not deliver to the ſaid *S.* the ſaid hundred yards of woollen cloth, or two hundred yards of linen cloth; *And* ſo the ſaid *J. M* ſaith, that the ſaid writing obligatory brought here into court, by the ſaid *J. M.* delivered in form aforeſaid, the ſaid condition not being performed, is not his deed; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *J. R.* ought to have or maintain his ſaid action thereupon againſt him, *&c.*

Condition not performed.

Et ſic non eſt factum.

Demurrer.

And the ſaid *J. R.* ſaith, that he, by any thing by the ſaid *J. M.* above in pleading alledged, ought not to be precluded from having his ſaid action thereupon againſt the ſaid *J. M.* becauſe he ſaith that the ſaid plea above pleaded by the ſaid *J. M.* in manner and form aforeſaid, and the matter therein con-

contained, are not sufficient in law to preclude the said *J. R.* from having his said action thereupon against the said *J. M.* to which said plea he the said *J. R.* has no need, and is not bound by the law of the land in any matter to answer; And this he is ready to verify: Wherefore, for default of a sufficient answer in this behalf, he the said *J. R.* prayeth judgment, and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him. *And* for causes of demurring in law in this behalf the said *J. R.* according to the form of the statute in such case lately made and provided, sheweth and demonstrateth to the court here, that the said *J. M.* doth not conclude his said plea to the contrary as he ought, and that the said plea is not issuable, and wanteth form, *&c.* *John Broderick.*

Causes of demurrer.

And the said *J. M.* saith, that the said plea by him the said *J. M.* above pleaded in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to preclude the said *J. R.* from having his said action thereupon against him the said *J. M.* which said plea, and the matter therein contained, he the said *J. M.* is ready to verify and prove as the court, *&c.* And because the said *J. R.* doth not answer to the said plea, and hath not hitherto in any manner denied the same, he the said *J. M.* as before prayeth judgment, and that the said *J. R.* may be barred from having his said action thereupon against him the said *J. M.* &c.

Joinder.

Continuance. &c. *But* becauſe the court of our ſaid lady the queen now here is not yet adviſed about giving judgment of and concerning the premiſſes, day is therefore given to the ſaid parties to come before our lady the queen at *W.* until —— next after ——, to hear judgment of and upon the ſame premiſſes, for that the court of our ſaid lady the queen now here is not yet adviſed thereof.

Bar in debt for rent, as to part, non debet. Lil. Ent 164. Pr Reg. 562.

And the ſaid *J.* by *G. L.* his attorney cometh and defendeth the force and injury, when, &c. and ſaith that the ſaid *J.* ought not to have or maintain his ſaid action thereupon againſt him, becauſe as to the ſaid 13 *l.* in the ſaid declaration firſt mentioned, parcel of the ſaid 26 *l.* and alſo as to 8 *l.* 15 *s.* and 9 *d.* parcel of the ſaid 13 *l.* in the ſaid declaration ſecondly mentioned, reſidue of the ſaid 26 *l.* the ſaid *J.* ſaith that he doth not owe to the ſaid *J. S.* the ſaid 13 *l.* or the ſaid 8 *l.* 15 *s.* and 9 *d.* or any part thereof; And of this the ſaid *J.* putteth himſelf upon the country: *And* the ſaid *J.* doth ſo likewiſe.

Iſſue.

As to the reſidue, a tender. 5 Co. 114. 2 Salk. 622, 624. Lilly's Entr. 476.

And as to 4 *l.* 4 *s.* and 3 *d.* reſidue of the ſaid 13 *l.* in the ſaid declaration ſecondly mentioned (the ſaid 13 *l.* laſt ſpecified being the ſaid reſidue of the ſaid 26 *l.* and being the ſaid rent for the ſaid demiſed premiſſes in the ſaid declaration ſecondly ſpecified) the ſaid *J.* ſaith, that well and true it is, that the ſaid 4 *l.* 4 *s.* and 3 *d.* of the ſaid rent upon the ſaid demiſe in the ſaid declaration ſecondly mentioned, at the birth of our Lord Chriſt in the year of our Lord 1701, aforeſaid, were in arrear, and ſtill are in arrear;

but the ſaid *J.* further ſaith, that he the ſaid *J.* upon the ſaid feaſt of the birth of our Lord Chriſt in the year of our Lord 1701, aforeſaid, by the ſpace of half an hour next before and until the ſetting of the ſun of the ſame feaſt, was ready at the ſaid other houſe in the ſaid declaration mentioned, and then and there offered to pay to the ſaid *J.* the ſaid 4*l.* 4*s.* and 3*d* which he ought to have paid there to the ſaid *J.* at the ſaid feaſt, according to the form and effect of the ſaid covenant in that behalf mentioned in the ſaid declaration; and that the ſaid *J.* or any other lawfully authorized on the behalf of the ſaid *J.* was not then and there ready to receive of the ſaid *J.* the ſaid 4*l.* 4*s.* and 3*d.* and that the ſaid *J.* on the ſaid feaſt-day, and at all times after the ſaid feaſt of the birth of our Lord Chriſt in the ſaid year of our Lord, hitherto was ready, and ſtill is ready to pay to the ſaid *J.* the ſaid 4*l.* 4*s.* and 3*d.* and he bringeth the ſame here into court, ready to pay the ſaid *J.* if he the ſaid *J.* is willing to receive the ſame; All and ſingular which things the ſaid *J.* is ready to verify, *&c.* Wherefore he prayeth judgment, if the ſaid *J.* ought to proceed for damages againſt the ſaid *J.* *R. Acberley.*

Plea in debt on an arbitration bond. Oyer.

And the ſaid *J.* by *R. S.* her attorney cometh and defendeth the force and injury when, *&c.* and prayeth oyer of the ſaid bond; and it is read to her, *&c.* ſhe alſo prayeth oyer of the condition of the ſaid bond; and it is read to her in theſe words,

No award made.

to wit, The condition, *&c.* which being read and heard, the ſaid *J.* ſaith that the ſaid *J. A.* ought not to have his ſaid action againſt her, becauſe ſhe ſaith that the ſaid arbitrators in the ſaid condition of the ſaid bond named, did not make any award of or upon the premiſſes in writing indented under their hands and ſeals, ready to be delivered to the ſaid parties on or before the 29th day of *October* next enſuing the date of the ſaid bond; neither did the ſaid arbitrators chuſe any umpire for the ending and compoſing the differences aforeſaid within the time in the condition of the ſaid bond limited in that reſpect; And this ſhe is ready to verify: Wherefore ſhe prayeth judgment, if the ſaid *J* ought to have his ſaid action againſt her, *&c.*

W. H. Aſhhurſt.

Replication, award ſet forth.

And the ſaid *J.* ſaith, that he ought not, by reaſon of any thing above alledged by the ſaid *J* to be barred from having his ſaid action againſt her, becauſe he ſaith, that on the 29th day of *October* in the condition above mentioned, the ſaid *J. W.* and *T. S.* the arbitrators named in the ſaid condition, having taken upon them the burthen of the ſaid award, and having fully examined and duly conſidered the proofs and allegations of both the ſaid parties, for the ſettling amity and friendſhip between them, at the city of *Bath* aforeſaid in the county aforeſaid, made and publiſhed their award and order of and concerning the premiſſes ſpecified in the afore-

aforefaid condition, in writing indented under their hands and feals, in manner and form following, (that is to fay) That all actions, fuits, quarrels, controverfies and demands whatfoever had, moved, arifen, and depending between the faid parties, for any manner of caufe whatfoever, to the day of the date of the faid award, fhould ceafe, and be no further profecuted, and that each of the faid parties fhould pay and bear his and her own cofts and charges in any wife relating to or concerning the faid premiffes; And the faid arbitrators in and by their faid award did further award, order and finally determine, that the faid *J. S.* her heirs, executors or adminiftrators, fhould pay to the faid *J. A.* his executors or adminiftrators, the full fum of 29*l.* of good and lawful money of *Great Britain*, without any deduction whatfoever, at one intire payment, on the 30th day of *January* then next enfuing, at eleven o'clock in the forenoon of the fame day, in the church-porch of the parifh of *W.* in the county of *S* and laftly the faid arbitrators, in and by their faid award, did award, order and finally determine, that on payment of the faid fum of 29*l.* the faid *J. A.* and *J. S.* fhould in due form of law execute each to the other of them general releafes, fufficient in the law for the releafing each to the other of them, his and her heirs, executors and adminiftrators, all actions, fuits, arrefts, caufe and caufes of action and fuit, quarrels, controverfies and demands whatfoever, for, touching or concerning any matter, caufe or thing

thing whatsoever, from the beginning of the world until the said —— day of —— in the year of our Lord —— aforesaid, as by the said award now produced here in court more fully appeareth; and the said *J. A.* in fact saith, that although he hath performed and fulfilled every thing specified in the aforesaid award on his part to be performed and fulfilled, nevertheless the said *J.* hath not paid to him the said *J.* the sum of 29 *l.* on the said 30th day of *January* next after the date of the said award, which she ought to have paid to him on that day, according to the form and effect of the said award; And this he is ready to verify: Whereupon he prayeth judgment, and his debt, together with his damages by means of the detention of the said debt, to be adjudged unto him.

John Glyn.

Demurrer.

And the said *J.* saith that the replication aforesaid of the said *J.* in manner and form aforesaid above made, and the matter therein contained, are insufficient in law for the said *J.* to have and maintain his said action against her, and that she the said *J.* is not necessitated or obliged by the law to make any answer to the said replication in manner and form aforesaid made; And this she is ready to verify: Wherefore, for want of a sufficient replication in this respect, she the said *J.* prayeth judgment, and that the said *J.* may be barred from having his said action against her, &c.

And

And the said *J.* for that he in his replication aforesaid hath alledged sufficient matter in law for him the said *J.* to have and maintain his said action against the said *J.* which matter he the said *J.* is ready to verify, and which matter the said *J.* hath not in any manner denied, nor answered the same, but refuseth to admit the proof thereof, the said *J.* as before prayeth judgment, and his debt aforesaid, together with his damages by means of detaining the same debt, to be adjudged to him, *&c.*

Joinder.

And the said *J. S. G.* and *J.* by *T. C.* their attorney come and defend the force and injury, when, *&c.* *And* the said *G.* and *J.* say that they are not guilty of the trespass and assault aforesaid, in manner and form as the said *J.* in his said* declaration hath above complained against them; And of this they put themselves upon the country: *And* the said *J.* doth the same. *And* the said *J. S. as to* the coming with force and arms, or any thing which is against the peace of our present lord the king, and also as to the whole trespass aforesaid, except the said assault on the said *J.* beating and evilly treating him, saith that he is not guilty thereof, as the said *J.* above hath complained against him: And thereupon he putteth himself upon the country: *And* the said *J.* doth the same. *And as to* the said assault of the said *J.* and evilly treating of him, above supposed to be done, the said *J.* saith that he said *J.* ought not therefore to have his said action against him, because he saith that before the said time when,

Plea in trespass and assault against three.

Two plead Not guilty.

The third, as to part, pleads Not guilty.

As to the residue, that defendant was master of a ship, and plaintiff opposed and ob-

structed him in the discharge of his duty.

when, &c. and at the said time when, &c. and afterwards, he the said *J. S.* was master of a certain ship called the *Orford*, and had the conduct, direction and management of the said ship lawfully committed to him, at *London* aforesaid, in the parish and ward aforesaid; and that the said *J.* at the said time when, &c. at *London* aforesaid, in the parish and ward aforesaid, opposed the said *J.* and obstructed him in the discharge of his duty as master of the said ship, and so placed himself in the way of the said *J. S.* that the said *J.* could not discharge his duty aforesaid without the said *J.* was removed from the place where he then stood; and the said *J.* then and there so requested the said *J.* to remove himself, and to stand out of his way, so that the said *J.* might discharge his duty aforesaid, which the said *J.* did not do, but continued to obstruct the said *J.* and to stand in his way as aforesaid; whereupon, because the said *J.* would not remove himself and stand out of the way of the said *J.* at his request, but continued to obstruct him in the discharge of his said duty as aforesaid, he the said *J.* gently laid his hands on the said *J.* to cause him to remove and to stand out of his way, for the discharge of the duty of the said *J.* as master of the said ship as aforesaid; which are the same assault upon the said *J.* beating and evil treating of him, whereof the said *J.* hath above against him declared; and this he is ready to verify: Wherefore the said *J. S.* prayeth judgment, if the said *J.* ought therefore

therefore to have his said action against him, *&c.*

And the said *J* by *L. M.* his attorney cometh and defendeth the force and injury when, *&c.* And as to the coming with force and arms, *&c.* and also the whole trespass aforesaid, except the breaking and entering the said close, and treading down and consuming the said grass with his feet in walking and treading down and consuming other grass with his cattle, he saith that he is in nothing guilty thereof, as the said *T.* above complaineth against him; And of this he putteth himself upon the country: *And* the said *T.* doth so likewise. *And* as to the breaking and entering the said close, and treading down and consuming the grass with his feet in walking, and treading down and consuming other grass with his cattle, the said *J.* saith that the said *T.* ought not to have his said action thereupon against him, because he saith that the said close of the said *T.* at the said time in which, *&c.* lay, and still lieth in a certain common field in *Usborn M.* aforesaid, called *Kirkfield*, lying contiguous to a certain common way there called a common balk, on the north part, and to a certain close in *Usborn M.* aforesaid called *Flask-close*, on the south part of which said close called *Flask close* one *A. B.* long before the time in which, *&c.* was seised in his demesne as of fee, and that the said *A. B.* and all those whose estate he had in the said close, from the time to the contrary whereof the memory of man is not, have had, used and en-

Bar in trespass. Prescription for a way through the plaintiff's close.

joyed a certain way for themſelves, their ſervants, farmers and tenants there, with their cattle, carts and carriages whatſoever, at all times of the year, at their pleaſure, from the ſaid common way in, by and thro' the ſaid cloſe in which, &c. to the ſaid cloſe called *Flaſk-cloſe*, and ſo back again from the ſaid cloſe, in, by and through the ſaid cloſe in which, &c. into the ſaid common way; and the ſaid *A. B.* being ſo ſeiſed thereof, afterwards and before the ſaid time in which, &c. at *Uſborn M.* aforeſaid died, after whoſe death the ſaid cloſe called *Flaſk-cloſe* deſcended to *W. B.* being then and ſtill under the age of 14 years, as ſon and heir of the ſaid *A. B.* upon which *Frances B.* widow, mother and guardian of the ſaid *W. B.* entered into the ſaid cloſe called *Flaſk-cloſe*, in the right and to the uſe of the ſaid *W. B.* and afterwards and before the ſaid time in which, &c. *to wit*, on the ——— day of &c. at *Uſborn M.* aforeſaid, the ſaid *F.* demiſed the ſaid cloſe called *Flaſk-cloſe* to the ſaid *J.* to hold to the ſaid *J.* and his aſſigns for the term of one year thence next enſuing, and ſo from year to year, ſo long as it ſhould pleaſe both parties, by virtue of which demiſe the ſaid *J.* entered into the ſaid cloſe called *Flaſk-cloſe*, and was and ſtill is poſſeſſed thereof; whereby the ſaid *J.* on the 1[illegible]th day of *May* in the 29th year aforeſaid, and at divers days and times afterwards, and before the 1ſt day of *June* then next enſuing went from the ſaid common way with his cattle, in, by and through the ſaid cloſe of

of the ſaid *T.* to the ſaid *Cloſe* called *Flaſk-cloſe*, and ſo returned back from the ſame cloſe in, by and through the ſaid cloſe of the ſaid *T* into the common way aforeſaid, uſing his ſaid way, doing as little damage as he could in the ſaid cloſe of the ſaid *T.* which ſaid breaking the ſaid cloſe in which, *&c.* for the cauſe aforeſaid, and treading down and conſuming the ſaid graſs with his feet in walking, and with his ſaid cattle in the ſaid cloſe in uſing the ſaid way, is the ſame breaking and entering the ſaid cloſe in which, *&c.* and treading down and conſuming the ſaid graſs whereof the ſaid *T.* above complaineth againſt him; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *T.* ought to have his ſaid action thereupon againſt him.

Plea, juſtification of an aſſault, the defendant being maſter of a ſloop, and the plaintiff a ſailor, and refuſing to do his duty.

And the ſaid *G. L.* by *J. G.* the younger his attorney cometh and defendeth the force and injury when, *&c.* and as to the coming with force and arms, and alſo the whole treſpaſs aforeſaid, except the aforeſaid aſſaulting and beating, ſaith that he is in nothing guilty thereof; And of this he putteth himſelf upon the country: *And* the ſaid *G. A.* doth ſo likewiſe, *&c.* *And* as to the reſidue of the ſaid treſpaſs above ſuppoſed to be done, the ſaid *G. L.* ſaith that the ſaid *G. A.* ought not to have his ſaid action thereupon againſt him, becauſe he ſaith, that for the ſpace of ſeveral months next before the time in which the ſaid treſpaſs is ſuppoſed to be done, and alſo at the ſaid time in which, *&c.* the ſaid *G. L.* was maſter, and the ſaid

G. A. one of the mariners of a certain ſhip called the *Union* frigate, which ſaid ſhip at the time in which, &c. was upon the high ſea (*to wit*, at the pariſh aforeſaid) in her voyage which ſhe was making to *Legborn*, and other places in the *Mediterranean* ſea, and from thence back to *London*; and that the ſaid *G. A.* at the ſaid time in which, &c. refuſing to do his duty in and about the neceſſary navigating and governing the ſaid ſhip in her ſaid voyage, and deſpiſing the orders of the ſaid *G. L.* in that behalf, and intending to ſow and ſtir up ſedition, tumults and mutiny amongſt the other mariners of the ſaid ſhip againſt the ſaid *G. L.* being his maſter as aforeſaid, the ſaid *G. L.* that he might keep the ſaid *G. A.* to his duty and obedience, moderately ſtruck the ſaid *G. A.* with his hand, as it was lawful for him to do, which is the ſame reſidue of the ſaid treſpaſs whereof the ſaid *G. A.* above complaineth; and this he is ready to verify: Wherefore the ſaid *G. L.* prays in judgment, if the ſaid *G. A.* ought to have or maintain his ſaid action thereupon againſt him, &c.

Plea, bar in treſpaſs, as to part Not guilty.

And the ſaid *B. Ly* —— his attorney cometh and defendeth the force and injury when, &c. and as to the coming with force and arms, or whatſoever that is againſt the peace of our lord the preſent king, as alſo the whole treſpaſs aforeſaid, with the cattle aforeſaid, except with one gelding and one mare of the cattle aforeſaid, above ſuppoſed to be done, the ſaid *B.* ſaith that he is not guilty thereof; And of this he putteth himſelf

self upon the country: *And* the said *A.* doth the like, *&c.* *And* as to the residue of the said trespass, with the one gelding and one mare aforesaid above supposed to be done, the said *B.* saith that the said *A.* ought not to have his said action against him, because he saith that the said close, and also the place in which the said trespass is above supposed to be done, are, and at the same time in which, *&c* were 40 acres of land with the appurtenances in *D* aforesaid, which said 40 acres of land with the appurtenances are, and at the same time in which, *&c.* and also from the time to the contrary whereof the memory of man is not, were parcel of a certain common field called *L.* in *D.* aforesaid. And the said *B.* further saith, that the borough of *D* in the county of *D.* is an antient borough, and that he the said *B.* is, and at the said time in which, *&c.* and long before, was and still is one of the burgesses of that borough, and that the burgesses of that borough, from the time to the contrary whereof the memory of man is not, until the 11th day of *July* in the 14th year of the reign of the lord *Charles* the first, late king of *England*, &c. were a body politic and corporate by the name of the bailiffs and burgesses of the borough of *D.* and by that name used to implead and be impleaded. *And* the said *E.* further saith, that in and upon the said 11th day of *July* in the 14th year of the reign of the lord *Charles* I. late king of *England*, &c. the said lord king *Charles* I. by his letters patent made under his great seal of *England*, bearing date at *West-*

As to residue, justifies for common by prescription, as a burgess of the borough of D.

Mellor v. Walker, *entr.* Hil. 21 & 22 Car 2 ro. 1283.
1 Vent. 21, 92.
2 Saund 4.
1 Sid. 462.
2 Keb. 658. 676, 858.

Letters patent

Westminster the 11th day of *July* in the said 14th year of his reign, constituted and created the bailiffs and burgesses of the borough aforesaid to be from thenceforth for ever a body politic and corporate, by the name of mayor and burgesses of the borough of *D.* in the county of *D.* as by the said letters patent which the said *B.* bringeth here into court more fully appeareth *And* the said *B.* further saith, that the said bailiffs and burgesses, from the time to the contrary whereof the memory of man is not, until the said 11th day of *July* in the said 14th year of the reign of the said lord *Charles* .I. and the mayor and burgesses of the said borough, upon the said 11th day of *July* in the 14th year aforesaid, and continually afterwards hitherto have had, and for the whole time aforesaid have been used to have, for themselves and every burgess of the said borough, common of pasture in the said field called *L.* whereof, &c. for all their cattle commonable within the said borough of *D.* levant and couchant, *to wit*, in every two years coming together when the said field called *L.* whereof, &c. in which, &c. or any part thereof was sowed with any corn, after the said corn in the said field called *L.* whereof, &c. was mowed and carried away, until the said field or any part thereof was re-sowed with corn, and in every third year when the said field called *L.* whereof, &c. lay fresh and fallow, then for the whole year; *Whereby* the said *B.* on the first day of *August* in the 20th year of the reign of our lord the present

Profert.

present king, which was the third year in which the said field called *L.* lay fresh and fallow, put his said gelding and mare which were the proper cattle of the said *B.* and levant and couchant within the said borough of *D.* into the said field called *L.* whereof, *&c.* to eat the grass growing in the same, in using his said common, and with his feet in walking for that cause, and with his said gelding and mare eat up, trod down and consumed the said grass then growing in the said close in which, *&c.* as it was lawful for him to do, which are the same residue of the said trespass whereof the said *H.* above complaineth against him; *Without this*, that he the said *B.* is guilty of any trespass in the said place in which, *&c* with the said gelding and mare, at any time after the said field or any part thereof was in any year sowed with corn, and before the corn in the same year in the said field called *L.* was mowed and carried away; And this he is ready to verify: Wherefore he prayeth judgment if the said *H.* ought to have his said action against him, *&c.*

Plea in assault by two defendants, as to part Not guilty.

And the said *A. W.* and *G. W.* by *T. H.* their attorney come and defend the force and injury when, *&c.* And as to the coming with force and arms, and all the trespass aforesaid, except the assaulting, beating and wounding the said *J.* by them supposed to be committed, they say that they are in no wise guilty thereof; And of this they put themselves upon the country: *And* the said *J. H.* likewise, *&c.* *And* as to the assault-

Issue.

As to the residue, one de-

fendant pleads Son assault demesne.

ing, beating and wounding the said *J.* above supposed to be committed by the said *A.* she the said *A.* saith that the said *J.* ought not to have or maintain his said action against her for the same, because she saith that the said *J.* upon the same day and year in the said declaration above mentioned, at *B.* aforesaid, with force and arms made an assault upon her the said *A.* and would then and there have beat, wounded and evil treated her, for which cause she the said *A.* then and there defended herself against the said *J.* And the said *A.* saith, if any damage or ill then and there befel the said *J.* the same was from the proper assault of the said *J.* upon the said *A.* and in defence of the said *A.* And this she is ready to verify: Wherefore she prayeth judgment, if the said *J.* ought to have or maintain his said action against her for the same. And the said *G.* as to the assaulting, beating and wounding of the said *J.* above supposed to be committed by her, the said *G.* saith that the said *J.* ought not to have or maintain his said action against her for the same, because she saith, that at the said time when the said trespass is above supposed to have been committed by the said *G.* they the said *A.* being the sister of the said *G.* and the said *J.* with force and arms, &c. were fighting together, and would have beat, wounded and evil treated each other at *B.* aforesaid; whereupon the said *G.* for preservation of the peace of his said majesty, and to prevent the said *A.* and *J.* from doing bodily hurt to each other;

The other a special Son assault, *viz. The two defendants were sisters, the plaintiff and the first defendant were fighting, the second defendant to preserve the peace, and in defending her sister,* molliter manus imposuit; *whereupon plaintiff assaulted her,* et sic, &c.

ther, and in defence of her said sister, then and there interposed between them, and gently laid her hands on the said *J.* to part them the said *A.* and *J.* from further fighting one with another, and to prevent the said *J.* from doing bodily hurt to her said sister *A.* Upon which the said *J.* then and there with force and arms made an assault upon her the said *G.* and then and there would have beat, wounded and evil treated her; whereupon the said *G.* then and there defended herself against the said *J.* And the said *G.* saith, that if any damage or ill then and there befel the said *J.* the same was from the cause aforesaid, and from the assault of the said *J.* upon her the said *G.* and in defence of the said *G.* as aforesaid; And this she is ready to verify: Wherefore she prayeth judgment, if the said *J.* ought to have or maintain his said action against her for the same.

Replication to the plea of the first defendant, de injuria sua propria.

And the said *J.* as to the plea of the aforesaid *A.* as to the aforesaid assaulting, beating and wounding of him the said *J.* by her the said *A.* saith, that by reason of any thing by the said *A.* in her plea aforesaid alledged, he ought not to be barred from having his action aforesaid against her for the same, because he saith that she the said *A.* of her own wrong, and without the cause by her in her plea aforesaid alledged, the day and year aforesaid, at *B.* aforesaid, did assault, beat and wound him the said *J.* in manner and form as the said *J.* above complaineth against her; And this he prayeth may be inquired of

of by the country: And the said A. likewise, &c. And the said J. as to the plea aforesaid of her the said G. as to the said assaulting, beating and wounding of him the said J. by her the said G. saith, that by reason of any thing by her the said G. in her plea aforesaid alledged, he ought not to be barred from having his said action against her for the same, because he saith that she the said G. of her own wrong, and without the cause by her in her plea aforesaid alledged, *to wit*, the day and year aforesaid, at B. aforesaid, did assault, beat and wound the said J. in manner and form as he the said J. above complaineth against her; And this he likewise prayeth may be inquired of by the country; And the said G. likewise, &c. *Therefore*, as well to try that issue, as the several other issues above joined between the said parties, the sheriff, &c.

Issue.

To the plea of the second defendant, de injuria sua propria.

Issue, and Venire *awarded.*

Assault.

And the said N. and J. by H. B. their attorney come and defend the force and injury when, &c. *And* the said J. saith that he is in no wise guilty of the trespass aforesaid, as the said J. above complaineth against him; And of this he putteth himself upon the country: *And* the said J. doth the like. *And* the said N. as to the coming with force and arms, and as to the wounding of the said J. and the tearing of her clothes aforesaid above supposed to be committed, saith, that he is in no wise guilty thereof, as the said J. above complaineth thereof against him; And of this he putteth himself upon the country: *And*

Plea, Not guilty by one defendant.

Issue.

Not guilty, as to part, by the other defendant.

And the said J. doth the like. *And* as to the residue of the trespass aforesaid above supposed to be committed, the said N. saith that the said J. ought not to have her aforesaid action against him, because he saith, that at the aforesaid time when it is supposed the aforesaid trespass was committed, he was lawfully possessed of a certain messuage, being his dwelling-house in P. in the county aforesaid; and he the said N. being so possessed of the said messuage aforesaid, the said J. without the leave of him the said N. did enter into the aforesaid house, and did tarry there and greatly disturb him in the possession thereof; whereupon the said N. then and there requested the said J. to depart out of the aforesaid house of him the said N. which she then and there wholly refused to do; wherefore the said N. to cause the said J. to depart from thence, did gently lay his hands upon the said J. in the said house to put her out of the said house, and did put her out of the house aforesaid, which are the aforesaid residue of the trespass aforesaid whereof the said J. above complaineth; *this*, that the said N. is guilty of the aforesaid residue of the trespass aforesaid at B. aforesaid, or elsewhere than at P. aforesaid; and this the said N. is ready to verify: Wherefore he prayeth judgment, if the said J. ought to have her aforesaid action against him for the same.

Issue.

As to the residue, plaintiff entered into the defendant's dwelling house and disturbed him in the possession of it, and defendant mollitur manus imposuit.

Traverse the place.

Replication, *de injuria sua propria.*

And

Plea in assault and imprisonment.

As to part, not guilty.

And the said *A.* by *S. F.* his attorney cometh and defendeth the force and injury, when, *&c.* *And* as to the coming with force and arms, and all the said several trespasses supposed to be done, except the said assault imprisoning, and detaining and keeping in prison of the said *C.* for the time in the declaration aforesaid first above mentioned, supposed to be done, he saith that he is not guilty thereof as the said *C.* above complaineth against him; And of this he putteth himself upon the country, *&c.* *And* the said *C.* doth the like, *&c.* *And* as to the said assault, evilly treating, imprisoning, and detaining and keeping in prison of the said *C.* in the declaration aforesaid first above mentioned supposed to be done, the said *A.* saith that the said *C* ought not to have his action aforesaid against him for the same, because he saith, that long before the time aforesaid in which, *&c.* and at the same time in which, *&c.* and continually afterwards hitherto, he the said *A.* was and is keeper of the common gaol of our sovereign lord the king of his county of *Y.* aforesaid, at the castle of *Y.* aforesaid in the said county; And that long before the said time in which, *&c.* *to wit,* in the term of St. *Hilary* in the 31th year of the reign of the lord the now king, a certain writ of *Ca. ad respond.* directed to the then sheriff of the county of *Y.* aforesaid, did issue out of the court of our said lord the king of the bench then being at *W.* in the county of *M.* by which said writ our said sovereign lord the king commanded the

Issue.

As to the residue.

Defendant is keeper of the county gaol of York

Ca ad respondendum *issued against plaintiff.*

said then sheriff that he should take the said C. D. and him safely keep, so that he might have his body before the justices of our said lord the king at W. aforesaid, from the day of *Easter* in fifteen days to answer E. F. in a plea of trespass, and also in a certain plea of trespass on the case, upon promise, to the damage of the said E. 30 *l*. Which said writ afterwards, and before the return thereof, *to wit*, on the 12th day of *March* in the year last above-mentioned, at the castle of Y. aforesaid, was delivered to G. H. esq; then sheriff of Y. in due form of law to be executed. By virtue of which said writ the said G. H. then being sheriff of the said county, afterwards, and before the return of the said writ, that is to say, the said 12th day of *March* in the said year last above mentioned, at the castle of Y. aforesaid, the said C. D. in due form of law arrested and took into his custody; And the said C. D. being then in custody of the said sheriff upon the arrest aforesaid, he the said G. H. being then sheriff of the county aforesaid, afterwards and before the return of the said writ, *to wit*, the said 12th day of *March* in the year last above mentioned, at the castle of Y. aforesaid, by his certain warrant under the seal of his office of sheriff of the county of Y. aforesaid sealed, and to the said A. then keeper of the gaol aforesaid directed, commanded that he the said A. should take into his custody the body of the said C. D. and him safely keep, so that the said sheriff might

Writ delivered to the sheriff.

Plaintiff arrested thereon.

Plaintiff committed to the custody of the defendant.

might have his body before the ſaid juſtices of our ſaid lord the king at W. from the ſaid day of *Eaſter* in fifteen days to anſwer the ſaid *F.* of the ſaid plea of treſpaſs on the caſe, upon promiſe, to the damage of the ſaid *E.* 30 *l.* By virtue of which ſaid warrant the ſaid *A.* afterwards and before the return of the ſaid writ, *to wit*, the ſame 12th day of *March* aforeſaid, in the year laſt above mentioned, the ſaid *A.* being then keeper of the ſaid gaol, the ſaid gaol being then at the caſtle of *Y.* aforeſaid, did gently lay his hands upon the ſaid *C.* to take him into his cuſtody in the gaol aforeſaid for the cauſe aforeſaid, and him the ſaid *C.* then and there for the cauſe aforeſaid did take into his cuſtody in the gaol aforeſaid, by virtue of the ſaid warrant, and according to the duty of his ſaid office did detain for the time in the declaration aforeſaid mentioned, that is to ſay, until ſuch time as he the ſaid *C.* by due courſe of law was out of the cuſtody of him the ſaid *A.* as gaoler as aforeſaid delivered, as it was lawful for him to do, which are the aſſault, evil treating, impriſoning, and detaining and keeping in priſon of the ſaid *C.* by the time aforeſaid in the ſaid declaration firſt above mentioned ſuppoſed to be done, whereof the ſaid *C.* above complaineth againſt him; *Without* this, that the ſaid *A.* is guilty of the ſaid treſpaſs, aſſault, impriſoning, and detaining and keeping in priſon of the ſaid *C.* at any time before the taking and receiving of the ſaid *C.* into the gaol aforeſaid, for the cauſe aforeſaid, or at any

Traverſe.

any time after his ſaid diſcharge out of the ſaid gaol as aforeſaid; and this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *C.* ought to have or maintain his action aforeſaid againſt him, *&c.*

Replication, defendant is guilty after plaintiff was diſcharged.

And the ſaid *C.* as to the ſaid plea of the ſaid *A.* above pleaded in bar, as to the ſaid aſſault, evil treating, impriſoning, and detaining and keeping in priſon of the ſaid *C.* above done, ſaith, that he by any thing before alledged ought not to be barred from having his ſaid action for the ſame againſt him, becauſe he ſaith that he the ſaid *A.* is guilty of the ſaid treſpaſs, aſſault, impriſoning, and detaining and keeping in priſon of the ſaid *C.* after his ſaid diſcharge out of the ſaid gaol in the ſaid plea mentioned, in manner and form as the ſaid *C.* hath above declared againſt him; And this he prayeth may be inquired of by the country: *And* the ſaid *A.* doth the like. *Therefore*, &c.

Iſſue.

Plea in caſe for words juſtifies the words.

And the ſaid *T. R.* by *J. G.* his attorney cometh and defendeth the force and injury, when, *&c.* and ſaith that the ſaid *T. G.* ought not to have his ſaid action againſt him, becauſe he ſaith that the ſaid *T. G.* at the reſpective times of ſpeaking of the ſaid reſpective words ſo ſpoken by the ſaid *T. R.* of the ſaid *T. G.* as aforeſaid, was a ſodomite and a buggerer, *to wit*, at *S.* aforeſaid; and therefore he the ſaid *T. R.* ſpoke of the ſaid *T. G.* the ſaid ſeveral words above-mentioned, as it was lawful for him; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *T. G.* ought

ought to have his said action against him, &c.

Replication, de injuria sua propria.

And the said *T. G.* saith, that he by any thing by the said *T. R.* in pleading above alledged ought not to be precluded from having his action aforesaid against him, because he saith that the said *T. R.* of his own wrong, without such cause by the said *T. R.* above in pleading alledged, on the said 1st day of *May* in the year of our Lord 1777, at *S.* aforesaid, did say, affirm, declare and publish, of and concerning the said *T. G.* the said words in the said declaration first above specified, that is to say, You, &c. [as in the declaration] and also afterwards, *to wit*, on the same day and year at *S.* aforesaid, the said *T. R.* with a loud voice did speak, rehearse, proclaim, publish and declare of the said *T. G.* the other words in the said declaration last above specified, that is to say, You, &c. [as in the declaration] in manner and form as the said *T. G.* hath thereof above declared; And this he prayeth may be inquired of by the country: *And* the said *T. R.* likewise. *Therefore*, &c.

Plea of bankruptcy.

AND the said *Robert H.* by *John F.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith that the said *Gabriel G.* ought not to have his said action against him, because for a general plea in this behalf, according to the form of the statute in such case made and provided, he saith that he the said *Robert* after the first day of *June* in the year of our

our Lord one thousand seven hundred and seventy-seven, and before the exhibiting the said bill of the said *Gabriel (to wit)* on the thirteenth day of *June* in the year of our Lord one thousand seven hundred and seventy-seven aforesaid, became a bankrupt within the intent and meaning of the several statutes made and in force concerning bankrupts, *(to wit)* at *London* aforesaid in the parish and ward aforesaid, and that the several causes of action aforesaid, and each and every of them did accrue before the time that he the said *Robert* became a bankrupt as aforesaid; And of this he putteth himself upon the * country: And the said *Gabriel* doth likewise the same. *Therefore*, &c.

Issue.

Hil. 17 *Geo.* 3.

Plea non assumpsit *to the second and third promises.*

AND the said *F. C.* by *G. B.* his attorney cometh and defendeth the force and injury when, &c. *And as to* the second and third promises and undertakings in the said declaration specified and above supposed to be made, the said *Francis* saith, that he did not undertake and promise in manner and form as the said *W. J.* thereupon above complaineth against him; And of this he putteth himself upon the country: *And* the said *W.* doth the like. *And as to* the first promise and undertaking in the declaration

Issue.

The statute of usury to the first premise being on a promissory note indorsed.

* This plea ought to conclude to the country, *Wil. Rep.* 249, 258. *Gilb. Cas.* 328. 10 *Mod.* 243. *Barnes* 236. *Fortesc. Rep.* 229, 232, 234, 245, 264. 2 *Barnard.* K. B. 37. *Andr.* 176.

above ſpecified and ſuppoſed to be made, the ſaid *Francis* ſaith, that the ſaid *W.* ought not to have his ſaid action thereupon againſt him, becauſe he ſaith, that after the 29th day of *September* in the year of our Lord 1714, *to wit*, on the ſaid 5th day of *March* in the year of our Lord 1776, at *London* aforeſaid, in the pariſh and ward aforeſaid, it was corruptly agreed between the ſaid *F.* and the ſaid *C. N.* in the ſaid declaration named, that the ſaid *C.* ſhould lend to the ſaid *F.* the ſum of 10*l.* 10*s.* and ſhould give day of payment thereof for the ſpace of one month then next enſuing, *to wit*, until the fifth day of *April* in the year of our Lord 1777 And that the ſaid *F.* for the loan of the ſaid 10*l.* 10*s* and for giving day of payment thereof for the time aforeſaid, ſhould give and pay to the ſaid *C.* the ſum of 5*s.* upon the ſaid 5th day of *April* in the year laſt mentioned for the intereſt and gain thereof, and for giving day of payment of the ſaid 10*l.* 10*s.* which ſaid ſum of 5*s.* exceeds the rate of 5*l.* for the intereſt of 100*l.* for one year, againſt the form of the ſtatute in ſuch caſe lately made and provided; And afterwards, *to wit*, on the ſaid 5th day of *March* in the ſaid year of our Lord 1744, at *London* aforeſaid, in the pariſh and ward aforeſaid, the ſaid *C.*, in purſuance of the ſaid corrupt agreement, did advance and lend to the ſaid *F.* the ſaid ſum of 10*l.* 10*s.* And the ſaid *F.* on that occaſion did ſign and deliver to the ſaid *C.* the ſaid promiſſory note in the ſaid declaration men-

Stat. 12 Ann. c. 16.

mentioned; And the ſaid *F.* then and there paid the ſaid ſum of 5*s.* for the loan and intereſt of the ſaid 10*l.* 10*s.* and for giving time for payment thereof for one month, *to wit*, until the ſaid 5th day of *April* in the ſaid year of our Lord 1777, in purſuance of and according to the form and effect of the ſaid corrupt agreement, by means whereof the ſaid promiſſory note in the ſaid declaration above mentioned, by virtue of the ſtatute in that caſe made and provided, is void in law; And this he is ready to verify: Wherefore he prayeth judgment if the ſaid *W.* ought therefore to have his ſaid action thereon againſt him, *&c.* *Wm. Whitaker.*

Cooke.

Trin. 24 & 25 *Geo.* 2.

Plea as to part, non aſſumpſit.

AND the ſaid *J. B.* in his proper perſon cometh and defendeth the wrong and injury, when, *&c.* And as to 36*l.* 2*s.* 11*d.* parcel of the ſaid 50*l.* in the ſaid promiſe and undertaking in the ſaid declaration firſt mentioned and ſuppoſed to be made; And alſo as to the promiſes and undertakings in the ſaid declaration, ſecondly, thirdly, and laſtly, above mentioned and ſuppoſed to be made, ſaith, that he did not undertake and promiſe in manner and form as the ſaid *Mary* above complaineth againſt him; And of this he putteth himſelf upon the country: And the ſaid *Mary* doth likewiſe the ſame.

Iſſue.

As to reſidue a tender.

And the ſaid *John* as to 13*l.* 17*s.* 1*d.* re-

sidue of the said 50 *l.* in the said promise and undertaking in the said declaration first mentioned and supposed to be made, saith, that the said *Mary* ought not to recover any damages by reason of the nonpayment of the said 13 *l.* 17 *s.* 1 *d.* residue of the said 50 *l.* in the said promise and undertaking in the said declaration first mentioned, because he saith, that he the said *John* after the making of the said first promise and undertaking as to the said 13 *l.* 17 *s.* 1 *d.* residue, *&c.* and before the day of exhibiting of the bill of the said *M.* against him the said *J.* *to wit*, on the said 30th day of *May* in the said year of our Lord 1751, at the parish of *St. Clement Danes* aforesaid in the said county of *Middlesex*, tendered and offered to pay to the said *M.* the said 13 *l.* 17 *s.* 1 *d.* residue, *&c.* which said 13 *l.* 17 *s.* 1 *d.* she the said *M.* then and there refused to accept or receive from the said *J.* And the said *J.* further saith, that he the said *J.* always from the time of making the said first promise and undertaking, as to the said 13 *l.* 17 *s.* 1 *d.* residue, *&c.* hath hitherto been ready and still is ready to pay to the said *M.* the said 13 *l.* 17 *s.* 1 *d.* and he bringeth the same here into court ready to be paid to the said *M.* if she will accept the same; And this he is ready to verify: Wherefore he prayeth judgment if the said *Mary* ought to recover any damages by reason of the nonpayment of the said 13 *l.* 17 *s.* 1 *d* residue, *&c.* thereof against him. *D. Poole.*

Mr.

Mr. *B*. take notice that the defendant *J*. *B*. at the trial of the general iſſue herein above pleaded, will inſiſt and give in evidence that the plaintiff *M. K.* before and at the time of exhibiting her bill againſt the ſaid *J*. *B*. was and ſtill is indebted to the ſaid *J*. *B*. in the ſum of 50 *l*. of lawful money of *Great Britain*, for work, labour, care and attendances by the ſaid *J*. *B*. in and about the proſecuting, defending and ſoliciting of divers cauſes, ſuits and buſineſſes in the law for the ſaid *Mary* at her ſpecial inſtance and requeſt done, taken and performed, and for money paid, laid out and expended by the ſaid *J*. for the ſaid *M*. in and about the proſecuting, defending and ſoliciting of thoſe cauſes, ſuits, and buſineſſes, at her like inſtance and requeſt, and for fees due and of right payable to the ſaid *J*. in that reſpect; And alſo in the further ſum of 50 *l*. of like lawful money, for money by the ſaid *J*. paid, laid out and expended for the ſaid *M*. at her like inſtance and requeſt; and for money by the ſaid *Mary* had and received, to and for the uſe of the ſaid *J*. Which ſaid ſeveral ſums ſo due and owing to the ſaid *J*. from the ſaid *M*. as aforeſaid, the ſaid *J*. doth intend to inſiſt, at the trial of the general iſſue above pleaded, that the ſame or ſo much thereof as ſhall be ſufficient may be ſet off againſt ſo much money, as ſhall appear to be due to the ſaid *M*. upon the ſaid ſeveral demands of the ſaid *Mary* contained in the ſaid declaration, to which the ſaid *J*. hath pleaded the general iſſue,

Notice of ſet off.

 according

according to the ſtatute in ſuch caſe made and provided, dated this 21ſt day of *May* [illegible] the year of our Lord 1751.

To Mr. *J. B.* attorney for the plaintiff. Yours, *&c J. B.* the defendant,

Plea, a releaſe. And the ſaid *Arundel Roberts* by *Thomas Holland* his attorney, cometh and defendeth the force and injury when, *&c.* and ſaith, that the ſaid *Benjamin Lane* ought not to have or maintain his ſaid action againſt him, becauſe he ſaith, that after the making the ſaid ſeveral promiſes and undertakings in the ſaid declaration mentioned above ſuppoſed to be made, and before the day of exhibiting the ſaid bill of the ſaid *B.* againſt him, *to wit*, on the 10th day of *May* in the 13th year of the reign of the lord the now king, at the pariſh aforeſaid in the ſaid county, the ſaid *B.* by his certain writing of releaſe indented, ſealed with the ſeal of the ſaid *B.* and now ſhewn here to the court of our ſaid lord the king, bearing date ſame day and year, did remiſe, releaſe, and for ever quit-claim unto the ſaid *A. R.* his heirs, executors and adminiſtrators, all and all manner of actions, cauſe and cauſes of actions, ſuits, bills, bonds, obligations, debts, dues, duties, reckonings, accounts, ſum and ſums of money, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages and demands whatſoever, which againſt him the ſaid *A.* he the ſaid *B.* his heirs, executors or adminiſtrators, ſhould or might

Profert.

might have, claim, challenge or demand for or by reason or means of any matter, cause or thing whatsoever, from the begining of the world, to the day of the date of the said writing of release, as by the said writing of release, amongst other things, more fully appeareth; And this he is ready to verify: Wherefore he prayeth judgment, if the said *Benjamin* ought to have or maintain his said action against him, *&c.*

Nash Grose.

Replication. And the said *B.* saith, that he ought not, by any thing by the said *A.* above in pleading alledged, to be barred from having or maintaining his said action in this behalf against him, because he saith, that he the said *B.* did not, after the making the several promises and assumptions in the said declaration mentioned, make such indenture of release as the said *A.* hath above in pleading alledged; and this he prayeth may be inquired of by the country: And the said *A.* doth so likewise. *Geo. Hill.*

Hil. 16 *Geo.* 3.

Bar, a general release in curia sur assump.

AND the said *William Hammond*, by *Nathaniel Trayten* his attorney, cometh and defendeth the force and injury, when, *&c.* and saith, that the said *Ann Davies* ought not to have or maintain her said action thereof against him, because he saith, that after the making the said several promises and undertakings in the said declaration men-

 tioned

tioned above ſuppoſed to be made, and before the exhibiting the ſaid bill of the ſaid *Anne*, *to wit*, on the 15th day of *April* in the 15th year of the reign of the lord the now king at *Ludlow* aforeſaid in the ſaid county, the ſaid *Ann* by her certain writing of releaſe, ſealed with the ſeal of the ſaid *Ann*, and then and there made and duly executed by her, which ſaid writing of releaſe the ſaid *William* bringeth here into court, the date whereof is the day and year laſt mentioned, for herſelf, her heirs, executors and adminiſtrators, did remiſe, releaſe, and for ever quit-claim, unto the ſaid *William*, his heirs, executors and adminiſtrators, all and all manner of action and actions, cauſe and cauſes of actions, ſuits, bills, bonds, writings, obligations, debts, dues, duties, reckonings, accounts, ſum and ſums of money, judgments, executions, extents, quarrels, controverſies, treſpaſſes, damages and demands whatſoever, both at law and in equity, or otherwiſe howſoever, which againſt the ſaid *William* ſhe ever had, then had, or which ſhe the ſaid *Ann*, her heirs, executors or adminiſtrators, could, ſhould, or might have, claim, challenge or demand, for or by reaſon or means of any act, matter, cauſe or thing, from the beginning of the world, to the day of the date of the ſaid writing of releaſe; as by the ſaid writing of releaſe, amongſt other things, more fully appeareth; And this he is ready to verify: Wherefore he prayeth judgment if the ſaid *Ann* ought

Profert.

to have or maintain her ſaid action thereof againſt him, *&c.* *D. P.*

Replication, dureſs of imprisonment.

And the ſaid *Ann* ſaith, that ſhe, by any thing above alledged by the ſaid *William* in pleading, ought not to be barred from having her action aforeſaid againſt him the ſaid *William*, becauſe ſhe ſaith, that ſhe the ſaid *Ann* at the time of making the writing aforeſaid, was impriſoned by him the ſaid *William, to wit*, at *Ludlow* aforeſaid in the ſaid county, and was there detained in priſon until ſhe the ſaid *Ann*, by force and dureſs of that impriſonment, then and there made the ſaid writing to the ſaid *William*; And this ſhe is ready to verify: Wherefore ſhe prayeth judgment, and her damages by reaſon of the premiſſes to be adjudged to her, *&c.* *F. R.*

Rejoinder.

And the ſaid *William* proteſting, that the ſaid *Ann*, at the time of making of the writing aforeſaid, was not impriſoned, as the ſaid *Ann* hath in and by her ſaid replication above ſuppoſed, for rejoinder the ſaid *William* ſaith, that the ſaid writing was not made by force and dureſs of impriſonment, as the ſaid *Ann* hath in her ſaid declaration above alledged: And hereupon he putteth himſelf upon the country, *&c.* Verdict *pro Q.*

Caſe.

Case;

Account for money lent. Another for money had and received.

Declaration in case Sur aff. *on a foreign bill of exchange by the person to whom made payable, against the drawer, the drawee refusing to accept it.* Paf. 10 G. 2. ro. 1035. Lil. Ent. 55. *Custom of merchants.*

London, *to wit*, *J.* C. late of, *&c.* was attached to answer unto *T. F.* of a plea of trespass upon the case, *&c.* *And* whereupon the said *T.* by *P. W.* his attorney complaineth, that *whereas* there now is, and from time immemorial hath been, an antient and laudable custom used and approved of by and amongst merchants and other persons, residing, trading, and using commerce in parts beyond the seas, and merchants and other persons, residing, trading, and using commerce within this kingdom of *E. to wit*, that if any merchant or other person, residing, trading, and using commerce in parts beyond the seas, shall have made any bill of exchange in writing, with his own proper hand thereto subscribed, and shall have directed such bill to any merchant or merchants, or other person or persons, residing, trading, and using commerce within this kingdom of *England*, and by such bill shall have required such merchant or merchants, or such other person or persons to whom such bill shall have been directed, to pay to any other merchant or other person residing, trading, and using commerce in parts beyond the seas, and named in such bill or order, any sum of money in such bill mentioned,

tioned, at any time mentioned in ſuch bill, and appointed by ſuch bill for the payment thereof; and if ſuch merchant or merchants, perſon or perſons, to whom ſuch bill ſhall have been directed, upon ſight of ſuch bill ſhall have refuſed to accept ſuch bill, or to pay ſuch ſum of money in ſuch bill mentioned, at the time mentioned in ſuch bill for payment thereof, to ſuch merchant or other perſon to whom or to whoſe order ſuch ſum of money in ſuch bill mentioned, by ſuch bill ſhall have been appointed to be paid; and if ſuch merchant or other perſon, to whom or whoſe order ſuch ſum of money in ſuch bill mentioned, by ſuch bill ſhall have been appointed to be paid, ſhall have cauſed ſuch bill to be proteſted in writing for ſuch non-acceptance or non-payment thereof; Then ſuch merchant or other perſon, who ſhall ſo have made ſuch bill, upon notice of ſuch non-acceptance or non-payment and proteſt, hath for all the time aforeſaid been liable, and hath been uſed and accuſtomed to be liable, and for all the time aforeſaid hath ought to have been liable, and ſtill is liable to pay to ſuch merchant or other perſon named in ſuch bill, to whom or whoſe order ſuch ſum of money in ſuch bill mentioned, by ſuch bill ſhall have been ſo appointed to have been paid. *And whereas* at the ſeveral times hereafter next mentioned the ſaid *J.* and *T.* were perſons reſiding, trading, and uſing commerce in parts beyond the ſeas, *to wit*, at St. *Martin*'s in the kingdom of *France*, and one *P. C.* and

Plaintiff and defendant reſiding beyond ſea, drawees reſiding in **England.**

D. C.

D. C. were persons residing, trading, and using commerce within this kingdom of *England*, *to wit*, at *London* aforesaid, and the said *P.* and *D* were then and there partners in their said commerce; And being so respectively residing, trading, and using commerce as aforesaid, the said *I.* on the 3d day of *April* in the year of our Lord 1776, in parts beyond the seas, *to wit*, at St. *Martin's* aforesaid in the kingdom of *France*, made his certain bill of exchange in writing, with his own proper hand thereto subscribed, according to the custom aforesaid, and then and there directed the said bill, bearing date the same day and year, to the said *P.* and *D.* and by the said bill required the said *P.* and *D.* at two usances, to pay that his first bill of exchange to the said *T.* or order, 74*l.* 18*s.* sterling, value received of the said *T.* and for balance of him the said *I.*'s account with the said *P.* and *D.* as by advice from the said *I.* Which said bill of exchange he the said *T* afterwards, *to wit*, on the 16th day of *April* in the year of our Lord 1776, at *London* aforesaid, *to wit*, at the parish of *St. Mary le Bow* in the ward of *Cheap*, shewed to the said *P.* and *D.* and then and there required the said *P.* and *D.* to accept the said bill, according to the said custom: But the said *P.* and *D.* then and there refused to accept the said bill, or ever to pay to the said *T.* the sum of money mentioned in the said bill, or any part thereof: By reason whereof he the said *T.* afterwards, *to wit*, on the same day and year last aforesaid, at *London* aforesaid,

Bill drawn by defendant payable to plaintiff.

Shewn to the drawees.

They refuse to accept it.

Bill protested.

aforesaid, in the parish and ward aforesaid, caused the said bill to be duly protested in writing, for such non-acceptance thereof by the said *P.* and *D.* Of which said non-acceptance of the said bill, and of the said protest of the said bill for the said non-acceptance thereof, he the said *T.* afterwards, *to wit*, on the 17th day of *April* in the said year of our Lord 1776, at *L.* aforesaid, in the parish and ward aforesaid, gave notice to the said *I.* By reason of which said premisses, and according to the custom aforesaid, he the said *I.* became liable to pay to the said *T.* the said sum of money mentioned in the said bill; And being so liable, he the said *I.* in consideration thereof, afterwards, *to wit*, the same day and year last aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *T.* to pay him the said sum of money mentioned in the said bill, when he should be afterwards thereto requested. *And whereas* the said *I.* and *T.* and *P.* and *D.* being so respectively residing, trading, and using commerce as aforesaid, and the said *P.* and *D.* being partners in their said commerce as aforesaid, the said *I.* afterwards, *to wit*, on the said 3d day of *April* in the year of our Lord 1776, aforesaid, new style, in parts beyond the seas, *to wit*, at *St. Martin's* aforesaid in the said kingdom of *France*, made his certain other bill of exchange in writing, subscribed with his own proper hand, according to the said custom, and the said last mentioned bill bearing date

Notice to defendant.

Assumpsit.

Second count.

Bill drawn by defendant payable to plaintiff.

the ſame day and year laſt aforeſaid, directed to the ſaid *P.* and *D.* and by the ſaid laſt mentioned bill required the ſaid *P.* and *D.* at two uſances to pay that his firſt bill of exchange to the ſaid *T.* or order, other 75 *l.* 18 *s.* ſterling, value received of him the ſaid *T.* and for balance of his the ſaid *I.*'s account with the ſaid *P.* and *D.* as by advice from the ſaid *I.* Which laſt mentioned bill of exchange he the ſaid *T.* afterwards, *to wit*, on the 26th day of *May* in the year of our Lord 1776, aforeſaid, at *London* aforeſaid, in the pariſh and ward aforeſaid, ſhewed to the ſaid *P.* and *D.* for their acceptance and payment thereof, and then and there requeſted the ſaid *P.* and *D.* to accept and pay the laſt mentioned bill, according to the tenor of the ſame bill, and the cuſtom aforeſaid: And the ſaid *P.* and *D.* then and there refuſed to accept the ſaid laſt mentioned bill, or ever to pay to the ſaid *T.* the ſaid ſum of money mentioned in the ſaid laſt mentioned bill, or any part thereof: By reaſon of which ſaid laſt mentioned premiſſes he the ſaid *T.* afterwards, *to wit*, on the ſame day and year laſt aforeſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid, cauſed the ſaid laſt mentioned bill to be duly proteſted in writing for ſuch non-acceptance and non-payment thereof by the ſaid *P.* and *D.* Of which ſaid non-acceptance and non-payment of the ſaid laſt mentioned bill, and of the ſaid laſt mentioned proteſt of the ſaid laſt mentioned bill for the ſaid non-acceptance and non-payment thereof, he the ſaid

Shewn to drawees.

They refuſe to accept it.

Bill proteſted.

Notice to defendant.

said *T.* afterwards, *to wit*, on the said 26th day of *May* in the year of our Lord 1776, aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, gave notice to the said *I.* by reason whereof, and according to the custom aforesaid, he the said *I.* became liable [*ut supra.*] *And whereas* at the several times hereafter mentioned the said *I.* and *T.* and *P.* and *D.* were persons residing, trading, and using commerce within this kingdom of *England*, *to wit*, at *L* aforesaid, in the parish and ward aforesaid, and the said *P.* and *D.* were then and there partners in their said commerce, and being so residing, trading, and using commerce, the said *I.* afterwards, *to wit*, on the 3d day of *April* in the year of our Lord 1776, at *L.* aforesaid, in the parish and ward aforesaid, made his certain other bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants from time immemorial used and approved, and the said last mentioned bill, bearing date the same day and year last aforesaid, directed to the said *P.* and *D.* and by the said last mentioned bill required the said *P.* and *D.* at two usances to pay that his first bill of exchange to the said *T.* or order, other 75 *l.* 18 *s.* sterling, value received of the said *T.* and for balance of his the said *I.*'s account with the said *P.* and *D.* as by advice from the said *I.* which said last mentioned bill of exchange he the said *T.* afterwards, *to wit*, on the 16th day of *June* in the year of our Lord 1776, aforesaid, at *L.* aforesaid, at the parish

Third count.

Plaintiff, defendant, and drawees residing in London.

Bill drawn by defendant payable to plaintiff.

Shewn to drawees.

parish and ward aforesaid, shewed to the said *P.* and *D.* and then and there required the said *P.* and *D.* to accept the said last mentioned bill according to the said custom; but the said *P.* and *D.* then and there wholly refused to accept the said last mentioned bill, or ever to pay to the said *T.* the said sum of money specified in the said last mentioned bill, or any part thereof: Of all which said last mentioned premisses he the said *I.* afterwards, *to wit*, on the 8th day of *June* in the year aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, had notice. By reason of which said last mentioned premisses, and according to the said custom, and by the law of merchants, he the said *I.* became liable [*ut supra.*]

They refuse to accept it.

Notice to defendant.

Indeb. ass. for money lent and accommodated 1 *Jan.* 1776.

Had and received.
Laid out and expended.

Declaration in case Sur ass. by the assignees of the effects of a bankrupt

Middlesex, *to wit*, G. *B.* late of, &c. was attached to answer *A. M.* and *F. C.* assignees of the goods, debts and chattels of *H. V.* a bankrupt, according to the form of the statutes concerning bankrupts made and provided, in a plea of trespass on the case, &c. *And* whereupon the said *A. M.* and *E. C.* by *W. W.* their attorney complain, *That whereas* the said *G.* after the 1st day of *May* in the year of our Lord 1705, and before he the said *H. V.* became a bankrupt, *to wit*, the —— day of —— in the year of our Lord ——, at *W.* in the said county of *M.* made his

On a promissory note drawn by defendant, and indorsed to the bankrupt.

his certain note in writing, commonly called a promiſſory note, with his own proper hand thereto ſubſcribed, bearing date the ſame day and year laſt mentioned, and the ſame note to one *J. M.* did then and there deliver, by which ſaid note the ſaid *G.* promiſed to pay to the ſaid *J. M.* by the name of *J. M.* Eſq; or order, *one month after date,* —— *value received*; and by reaſon thereof, and alſo by force of the ſtatute in ſuch caſe made and provided, the ſaid *G.* became chargeable to pay to the ſaid *J. M.* or his order, the ſame ſum of money, according to the tenor of the ſaid note. *And* the ſaid *J. M.* after the making of the ſaid note, and before the ſaid ſum mentioned in the ſaid note, or any part thereof, was paid to him, and alſo before the time by the ſaid note appointed for payment thereof, and alſo before the ſaid *H. N.* became a bankrupt, *to wit,* the ſame day and year laſt mentioned, at *W.* aforeſaid, indorſed the ſaid note, with his own proper hand thereunto ſubſcribed, and by the ſaid indorſement appointed the contents of the ſaid note to be paid to the ſaid *H. V.* for value received, and for that purpoſe the ſaid *J. M.* did then and there deliver the ſaid note ſo indorſed to the ſaid *H. V.* Whereof the ſaid *G.* afterwards, *to wit,* the day and year laſt mentioned, at *W.* aforeſaid, had notice; and by reaſon thereof, and alſo by force of the ſtatute in ſuch caſe made and provided, the ſaid *G.* became chargeable to pay to the ſaid *H. V.* the ſame ſum of money, according to the tenor of the ſame

Indorſement.

Notice.

Aſſumpſit. note, and of the indorſement thereon. *And* being ſo chargeable, the ſaid G. in conſideration thereof, afterwards, and before the ſaid *H. V.* became a bankrupt, *to wit*, the ——day of——in the year of our Lord—— at *W.* aforeſaid, undertook, and to the ſaid *H. V.* then and there faithfully promiſed to pay to the ſaid *H. V.* the ſame ſum of money mentioned in the ſaid note, according to the indorſement thereon, when afterwards he ſhould be thereunto required.

Indeb. aſſump. *for money lent by the bankrupt.* *And whereas* alſo the ſaid *G.* afterwards, and before the ſaid *H. V.* became a bankrupt, *to wit*, the ſaid —— day of —— in the ſaid year of our Lord —— at *W.* aforeſaid, was indebted to the ſaid *H. V.* in —— of good and lawful money of *Great Britain*, for ſuch a ſum of money by the ſaid *H. V.* to the ſaid *G.* and at the ſpecial inſtance and requeſt of the ſaid *G.* before that time lent and accommodated; and being ſo indebted, the ſaid *G.* in conſideration thereof, afterwards, and before the ſaid *H. V.* became a bankrupt, *to wit*, the day and year laſt mentioned, at *W.* aforeſaid, undertook, and to the ſaid *H. V.* then and there faithfully promiſed to pay to the ſaid *H. V.* the ſaid——laſt mentioned, when afterwards he ſhould be thereunto required.

Breach. *Nevertheleſs*, the ſaid *G.* not regarding his ſaid ſeveral promiſes and undertakings aforeſaid, in form aforeſaid made, but contriving and fraudulently intending the ſaid *A.* and *E.* in this behalf craftily and ſubtilly to deceive and defraud, hath not yet paid the ſaid ſeveral ſums of money or any part thereof

thereof to the said *H.* at any time before he the said *H.* became a bankrupt, or to the said *A.* and *E* or either of them, at any time after the said *H.* became a bankrupt, (altho' the said *G.* afterwards, *to wit*, the said —— day *&c.* —— in the said year of our Lord ——, and oftentimes afterwards, before he the said *H.* became a bankrupt, and after the said *H.* became a bankrupt, *to wit*, the —— day of —— in the year of our Lord 1776, and oftentimes as well before as after, by the said *A.* and *E.* at *W.* aforesaid, was thereunto required), but he hath hitherto altogether refused, and still doth refuse to pay or in any wise to content them or either of them for the same, to the damage of the said *A.* and *E.* 120*l.* And thereof they bring suit, *&c.*

Declaration in case sur aff. against an executor.

London, *to wit*, W. B. late of, *&c.* executor of the testament and last will of *R B.* widow, deceased, was attached to answer *W. C.* in a plea of trespass on the case, *&c.* *And* whereupon the said *W. C.* by *J. C.* his attorney complaineth, *That whereas* after the 1st day of *May* which was in the year of our Lord 1705, *to wit*, on the —— day of —— in the year of our Lord ——, the said *R.* in her life-time at *L. to wit*, at the parish of St. *Bridget*, otherwise *Bride*'s, in the ward of *Farringdon without*, made her certain note in writing, called a promissory note, subscribed with the proper hand and name of her the said *R.* bearing date the same day and year last abovesaid, and the

By the second indorse of a promissory note drawn by the testatrix.

 same

ſame note ſo ſubſcribed then and there, *to wit*, on the ſame day and year laſt above mentioned, at *L.* aforeſaid in the pariſh and ward aforeſaid, delivered to one *R. B.* by which note the ſaid *R.* promiſed to pay to the ſame *R. B.* or order, 40 *l.* *three months after date*, *for value* in the ſame note mentioned to be received. *And* the ſaid *R.* (to whom or to whoſe order the payment of the ſaid money in the ſame note contained was appointed to be made) afterwards, and before the payment of the money in the ſaid note contained, *to wit*, on the ſame —— day of —— in the ſaid year of our Lord ——, at *L.* aforeſaid, in the pariſh and ward aforeſaid, by a certain indorſement in writing, ſubſcribed with the proper hand of the ſaid *R.* and indorſed upon the ſame note, did aſſign the aforeſaid note, and by that indorſement did appoint and order the contents of the aforeſaid note to be paid to one *M. Y.* or her order, for value in the ſame indorſement mentioned to be received. *And* the aforeſaid *M.* (to whom or to whoſe order the payment of the ſaid ſum of money contained in the ſame note was by the ſame indorſement appointed to be made) afterwards, and before the payment of the money aforeſaid contained in the ſaid note, *to wit*, on the ſame —— day of ——, in the year of our Lord —— aboveſaid, at *L.* aforeſaid in the pariſh and ward aforeſaid, by another indorſement in writing, ſubſcribed with the proper hand of the ſaid *M.* and indorſed upon the ſaid note, did aſſign the ſame note, and

First indorſement.

Second indorſement.

and by that indorſement did appoint and order the contents of the aforeſaid note to be paid to the ſaid *W. C.* according to the tenor of the aforeſaid note. *Of which* ſaid indorſements the ſaid *R.* in her life-time afterwards, *to wit*, on the ſame —— day of —— in the year of our Lord —— aforeſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid, had notice by the ſaid *W. C.* *By reaſon* of which ſaid premiſſes, and alſo by force of the ſtatute in that caſe lately made and provided, the aforeſaid *R.* in her life-time was and became chargeable to pay to the ſaid *W. C.* the ſaid ſum of 40 *l.* in the ſaid note contained, according to the tenor of the ſame note, and of the ſaid two indorſements thereon made as aforeſaid. *And* being ſo chargeable, &c.

Notice.

Aſſumpſit.

Middleſex, *to wit*, *J. R.* late of the pariſh of St. *Paul, Covent Garden*, Eſq; was attached to anſwer *J. F. L.* of a plea of treſpaſs upon the caſe, &c. *And whereupon* *J. F. L.* by *J. S.* his attorney complaineth, *That whereas* the ſaid *J. R.* on the 1ſt day of *Auguſt* in the year of our Lord 1772, at *W.* in the ſaid county of *M.* was indebted to the ſaid *J. F. L.* in the ſum of 100 *l.* of good and lawful money of *Great Britain*, for certain work, labour, attendance and ſervice of the ſaid *J. F. L.* before that time done and performed by the ſaid *J. F. L.* in his buſineſs of a muſician, at the Theatre Royal in *Covent Garden*, for the ſaid *J. R.* at his ſpecial inſtance and requeſt; and alſo for other work

Declaration in caſe, Sur aſſ.

Indeb. aſſ. *for work, &c. in the buſineſs of a muſician at the play-houſe.*

and labour done and performed by him the said *J. F. L.* for the said *J. R.* at his like instance and request; and being so indebted, he the said *J. R.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, undertook, and to the said *J. F. L* then and there faithfully promised to pay him the said sum of money. *And whereas also* the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, in consideration that the said *J. F. L.* at the special instance and request of the said *J. R.* had before that time done and performed certain other work, labour, attendance and service in his business of a musician, at the theatre royal in *Covent Garden* aforesaid; and also other work and labour for the said *J. R.* at his like instance and request, undertook, and to the said *J. F. L.* then and there faithfully promised to pay to him so much money as he the said *J. F. L.* had reasonably deserved to have from the said *J. R.* for the same. And the said *J. F. L.* doth aver, that he reasonably deserved to have from the said *J. R.* for the same, another sum of 100*l.* of like lawful money, that is to say, at *W.* aforesaid, whereof the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, there had notice. *And whereas also* the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, was indebted to the said *J. F. L.* in the further sum of 100*l.* of like lawful money of *Great Britain*, for certain work, labour, attendance,

Quantum meruit *thereon.*

Indeb. ass. *for work, &c. by plaintiff's wife, in the business of an actress and singer at the playhouse.*

attendance and ſervice of *I.* the wife of the ſaid *J. F. L.* before that time done and performed by the ſaid *I.* the wife of the ſaid *J. F. L.* whilſt ſhe was the wife of the ſaid *J. F. L.* in her buſineſs of an actreſs and ſinger at the theatre royal in *Covent Garden* aforeſaid; and alſo for other work, labour and ſervice done and performed by her whilſt ſhe was the wife of the ſaid *J. F. L.* for the ſaid *J. R.* at his ſpecial inſtance and requeſt; and being ſo indebted, he the ſaid *J. R.* in conſideration thereof, afterwards, that is to ſay, on the ſame day and year aforeſaid, at *W.* aforeſaid, undertook, and to the ſaid *J. F. L.* then and there faithfully promiſed to pay to him the laſt mentioned ſum of money. *And whereas alſo* the ſaid *J. R.* afterwards, that is to ſay, on the ſame day and year aforeſaid, at *W.* aforeſaid, in conſideration that the ſaid *I.* the wife of the ſaid *J. F. L.* at the ſpecial inſtance and requeſt of the ſaid *J. R.* had before that time, whilſt ſhe was the wife of the ſaid *J. F. L.* done and performed certain other work, labour, attendance and ſervice, in her buſineſs of an actreſs and ſinger at the theatre royal in *Covent Garden* aforeſaid, and other work and labour for the ſaid *J. R.* at his like inſtance and requeſt undertook, and to the ſaid *J. F. L.* then and there faithfully promiſed to pay him ſo much money as he had reaſonably deſerved to have from the ſaid *J. R.* for the ſame: And the ſaid *J. F. L.* doth aver, that he reaſonably deſerved to have from the ſaid *J. R.* for the ſame another ſum of

Quantum meruit *thereon.*

of 100 *l.* of like lawful money of *Great Britain*, that is to say, at *W.* aforesaid, whereof the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, there had notice*. *Nevertheless* the said *J. R.* not regarding his said several promises and undertakings so made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said *J. F. L.* in this behalf, hath not paid to him the said several sums of money, or any of them, or any part thereof; although to pay the same to him the said *J. F. L.* he the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, was requested by the said *J. F. L.* but the said *J. R.* to pay the same to him hath hitherto altogether refused, and doth yet refuse, to the damage of the said *J. F. L.* of 150 *l.* And thereof he bringeth suit, *&c.*

Breach.

Declaration in case Sur assumpsit.

London, to wit, *R. L.* late of, *&c.* was attached to answer unto *J. R.* in a plea of trespass on the case, *&c.* *And whereupon* the said

* *Indeb. assumpsit* by baron and feme, for work done by the wife, *ad damnum ipsorum*, upon a special promise made to the wife only, the wife must be made a party to the action, but not on a promise implied by law; the law will not imply any promise made to the wife, she is servant to the husband, who was at the charge in providing materials, *&c.* to carry on the trade; therefore he ought to have the recompence, and therefore the law implies the promise was made to him only. Judgment *Quod nil capiat per billam.* Carth. 251.

ſaid *J.* by *L. R.* his attorney complaineth, *That whereas* the ſaid *R.* on the —— day of —— in the year of our Lord 1734, at *L. to wit*, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, was indebted unto the ſaid *J.* in 12 *l* for meat, drink, waſhing and lodging, by the ſaid *J.* before that time found and provided for * one *H* the wife of the ſaid *R.* at the ſpecial inſtance and requeſt of the ſaid *R.* and being ſo indebted, he the ſaid *R.* in conſideration thereof, afterwards, *to wit*, the ſame day and year aboveſaid, at *L.* aforeſaid, in the pariſh and ward aforeſaid undertook, and then and there faithfully promiſed the ſaid *J.* to pay him the ſaid ſum of money, when he ſhould be afterwards thereunto requeſted. *And whereas afterwards, to wit*, the ſame day and year aboveſaid, at *L.* aforeſaid, in the pariſh and

Indeb. aff. *for meat, drink, waſhing and lodging, found for defendant's wife.*

Quantum meruit *thereon.*

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* The huſband and wife lived ſeparate, ſhe boarded in the plaintiff's houſe, who declares againſt the huſband, as for meat and drink found and provided for the huſband. On evidence it appeared to be for the wife. *Eyre* C J held it did not ſupport the declaration; for though the husband is chargeable upon his implied contract for what neceſſaries are adminiſtred to the wife, and therefore if goods are delivered to her, the vendor may declare generally for goods ſold and delivered; yet in this caſe the plaintiff fails in his deſcription of the ſubject matter of the contract; ſo that where he now declares generally, a recovery in this action could not be pleaded in bar to a ſpecial action for meat and drink found and provided for the wife, *Trin.* 12 *G.* 1. *Hadley* v. *Collins.* MS. Notes.

ward aforesaid, in consideration that the said *J.* had before that time found and provided other meat, drink, washing and lodging for the said *H.* the said wife of the said *R.* and at the like special instance and request of the said *R.* he the said *R.* undertook, and then and there faithfully promised the said *J.* to pay him so much money as he therefore reasonably deserved to have: And the said *J.* doth aver, that he therefore reasonably deserved to have of the said *R.* other 12 *l.* *to wit*, at *L.* aforesaid, in the parish and ward aforesaid; whereof the said *R.* then and there had notice. *Yet*, &c.

Breach.

Memorandum of a bill against an attorney.

Middlesex, to wit: *Be it remembered*, that on the —— day of ——, in this same term, *T. H.* came here into court by *S. G.* his attorney, and exhibited to the justices of our lord the king here his certain bill against *L. J.* one of the attornies of the court of our lord the king of the bench present here in court in his own proper person, of a plea of trespass on the case, which said bill followeth in these words, *to wit*, *Easter term* in the 10th year of the reign of king *George* III. *To* the justices of our lord the king of the common bench, *Middlesex*, *to wit*, *T. H.* by *J. G.* his attorney complaineth of *L. J.* one of the attornies of the court of the bench of our sovereign lord the king present here in court in his own proper person,

Bill in case sur assumpsit *against an attorney.*

Indeb. ass. *for the use and occupation of a messuage.*

for that whereas the said *L.* the 1st day of *April* in the year of our Lord 1769, at *W.* in the said county of *M.* was indebted to the said *F.* in 60 *l.* of lawful money of *Great*

Britain, for the ufe and occupation of a certain meffuage, or tenement and garden, with the appurtenances, of him the faid *T.* lying and being at *H.* in the county aforefaid, before that time held, ufed and occupied by the faid *L.* at his fpecial inftance and requeft from the faid *T.* and by his permiffion; and being fo indebted, the faid *L.* afterwards, that is to fay, the fame day and year abovefaid, at *W.* aforefaid in the county aforefaid, in confideration thereof undertook, and then and there faithfully promifed the faid *T.* to pay him the faid fum of money when he fhould be thereto required. *And alfo whereas* the faid *L.* afterwards, that is to fay, the fame day and year abovefaid, at *W.* aforefaid in the county aforefaid, in confideration that the faid *T.* at the like fpecial inftance and requeft of him the faid *L.* had before that time permitted him the faid *L.* to have and ufe a certain other meffuage or tenement and garden, with the appurtenances of him the faid *T.* lying and being in *H.* aforefaid in the county aforefaid, undertook, and then and there faithfully promifed the faid *T.* to pay him fo much money as he had reafonably deferved to have for the fame, when he the faid *L. J.* fhould be thereto required: And the faid *T.* in fact faith, that he reafonably deferved to have for the fame from the faid *L.* other 60 *l.* of like lawful money, *to wit*, at *W.* aforefaid in the county aforefaid; whereof the faid *L.* afterwards, *to wit*, the fame day and

Quantum meruit.

and year aforesaid, at *W.* aforesaid in the county aforesaid had notice. *Yet*, &c.

Declaration in case Sur aff. *against the survivor, on a joint promise.*

Middlesex, to wit, *W. P.* late of the parish of *St. Clement Danes* in the county of *Middlesex*, vintner, was attached to answer *J. F.* and *T. G.* in a plea of trespass upon the case, &c. And whereupon the said *J.* and *T.* by *H. S.* their attorney complain, that *whereas* the said *W.* together with one *T. T.* lately deceased (whom the said *W.* survived) in the life of the said *T. T.* that is to say, on, &c. at, &c. were indebted to the said *J. F.* and *T. G.* in 100 *l.* of lawful money, &c. for so much money by the said *W. P.* and *T. T.* in the life-time of the said *T. T.* of the said *J. F.* and *T. G.* and to the use of the said *J. F.* and *T. G.* before that time had and received; and being so indebted, the said *W. P.* and *T. T.* in consideration thereof, afterwards, that is to say, on the same day and year at, &c. undertook, and to the said *J. F.* and *T. G.* then and there faithfully promised that they the said *W. P.* and *T. T.* would well and faithfully pay and content the said 100 *l.* to the said *J. F.* and *T. G.* when they should be thereunto afterwards requested. *And also whereas* afterwards, that is to say, on the same day and year abovesaid at, &c. the said *W. P.* and *T. T.* in the life-time of the said *T. T.* were indebted [for money lent] *Nevertheless* the said *W. P.* and *T. T.* in the life-time of the said *T. T.* and the said *W. P.* after the death of the said *T. T.* not regarding their said several promises and undertakings made in

Indeb. aff. *for money had and received.*

Indeb. aff. *for money lent.*

in form aforefaid, but contriving and fraudulently intending craftilly and fubtilly to deceive and defraud the faid *J. F.* and *T. G.* in this behalf, have not paid, nor has either of them paid the faid feveral fums of money, or any of them, or any part thereof, to the faid *J. F.* and *T. G.* or to either of them, (although fo to do the faid *W. P.* after the death of the faid *T. T.* that is to fay, on the 3d day, *&c.* at, *&c.* was requefted by the faid *J. F.* and *T. G.*) but they wholly refufed, and the faid *W. P.* ftill refufeth to pay the fame to them, or any ways to content them for the fame, to the damage of the faid *J. F.* and *T. G.* of 100*l.* And thereof they bring fuit, *&c.* *Harley Vaughan.*

Declaration in cafe Sur aff. *by affignees of the goods of a bankrupt.*

London, to wit, *E. H.* late of, *&c.* and *T. T.* late of, *&c.* were attached to anfwer *J. B. G. C.* and *W. C.* affignees of the debts, goods and chattels of *A. B.* and *B. R.* bankrupts, according to the form of the ftatute made and provided concerning bankrupts, in a plea of trefpafs on the cafe, *&c.* And whereupon the faid *J. G.* and *W.* by *H. S.* their attorney complain, wherefore *whereas* the faid *E.* and *T.* on the 30th day, *&c.* at, *&c.* were indebted to the faid *J. G.* and *W.* as being affignees of the debts, goods and chattels of the faid *A.* and *B.* bankrupts as aforefaid, in 50*l.* of lawful money, *&c.* for fo much money by the faid *E.* and *T.* of the faid *A.* and *B.* before that time had and received; and being fo indebted, *&c.* undertook, and to the faid *J. G.* and *W.* then and

Indeb. aff. *for money had and received.*

and there faithfully promised that, &c. to the said *J. G.* and *W.* when, &c. *And also whereas* the said *E.* and *T.* afterwards, that is to say, on the same 30th day, &c. at &c. accounted together with the said *J. G.* and *W.* being assignees, &c. as aforesaid, concerning divers other sums of money to the said *J. G.* and *W.* as being assignees, &c. as aforesaid, before that time due, and then being in arrear and unpaid, and on the said account the said *E.* and *T.* then and there were found in arrear to the said *J. G.* and *W.* in 48 *l.* 16 *s.* 6 *d.* of like lawful money, &c. and being so found in arrear, &c. *Nevertheless*, the said, &c. intending the said *J. G.* and *W.* in this behalf craftily, &c. or any part thereof, to the said *J. G.* and *W.* or to either of them, (although often requested) have not, nor has either of them paid, but have intirely refused, and still do refuse to pay the said several sums of money to the said *J. G.* and *W.* or any ways content them for the same, to the damage of the said *J. G.* and *W.* of 50 *l.* And thereupon they bring suit, &c.

Insimul computassent.

Breach.

John Aspinall.

Declaration in case Sur ass. *against an executor for money had and received of and for the plaintiffs, and to their use.* 3 D. A. 393. p. 13. S. C.

Huntingdonshire, to wit, *H. F.* late of *H.* in the county aforesaid, innholder, executor of the testament of *T. W.* was attached to answer *T. L. J. H.* and *E. C.* of a plea of trespass on the case, &c. And whereupon the said *T. L. J.* and *E.* by *R. C.* their attorney complain. Wherefore whereas the said *T. W.* in his life-time, *to wit*, on the 5th day of *October* in the 32d year of the reign

reign of our ſovereign lord *Charles* II. now king of *England*, &c. at *H.* was indebted to the ſaid *T. L. J.* and *E.* in 100*l.* of lawful money of *England*, as well for money by the ſaid *T. W.* in his life-time before that time had and received of the ſaid *T. L. J.* and *E.* as for money by the ſaid *T. W.* in his life time before that time had and received for the ſaid *T. L. J.* and *E.* to the proper uſe of the ſaid *T. L. J.* and *E.* and the ſaid *T. W.* being ſo thereupon indebted, the ſaid *T. W.* in his life-time afterwards, *to wit*, on the ſame day and year at *H.* aforeſaid, in conſideration thereof undertook, and to the ſaid *T. L. J.* and *E.* then and there faithfully promiſed that he the ſaid *T. W.* would well and truly pay and content the ſaid 100*l.* to the ſaid *T. L. J.* and *E.* when he ſhould be thereunto afterwards requeſted. *Yet* the ſaid *T. W.* in his life-time, and the ſaid *H.* after the death of the ſaid *T. W.* not minding his ſaid promiſe and undertaking, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *T. L. J.* and *E.* in this behalf, have not paid or in any manner ſatisfied, nor has either of them paid or in any manner ſatisfied the ſaid 100*l.* or any part thereof, to the ſaid *T. L. J.* and *E.* or to either of them; although afterwards the ſaid *T. L.* in his life-time, *to wit*, on the 10th day of *November* in the 32d year aforeſaid, and the ſaid *H.* after the death of the ſaid *T. W. to wit*, on the 7th day of *December* in the 32d year aforeſaid, at *H.* aforeſaid

3 Lev. 57. S. C. Tr. 33 Car. 2. Ro. 1097, 1098, 1999.

Breach.

aforesaid, were thereunto severally requested by the said *T. L. J.* and *E.* but they intirely refused to pay them the same, and the said *H.* still refuseth to pay them the same, to the damage of the said *T. L. J.* and *E.* of 120*l.* And thereof they bring suit, &c.

Plea.

And the said *H.* by *G. M.* his attorney cometh and defendeth the force and injury, when, &c. and saith that the said *T. L. J. H.* and *E. C.* ought not to have their said action against him, &c. Because he saith that the said *T. W.* in his life-time, *to wit*, on the 6th day of *September* in the 32d year of the reign of our sovereign lord *Charles* II. now king of *England*, &c. at *H.* aforesaid, by his certain writing obligatory acknowledged himself to be bound to one *D. H.* in 40*l.* to be paid to the said *D. H.* when he should be thereunto requested; which said writing was made by the said *T. W.* to the said *D. H.* for a true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* *Whereby* the said *D. H.* after the death of the said *T. W.* (the said debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 33d year of the reign of our lord the now king, in the court of our lord the king before Sir *Francis North*, knight, and his companions, then justices of the said lord the king of the bench here, *to wit*, at *W.* impleaded the said *H.* of and for the said 40*l.* then and yet unpaid, by the writ of our said lord the king, of debt, returnable and returned in the said court; in which said plea the said parties

A bond entered into by the testator.

Defendant impleaded thereon.

parties appearing in the same court, the said *D. H.* by *R. C.* then his attorney said, that whereas the said *T.* in his life-time, on the 6th day of *September* in the 33d year of the reign of our sovereign lord *Charles* II. now king of *England*, &c. at *H.* aforesaid, by his certain writing obligatory acknowledged himself to be bound to the said *D. H.* in the said 40 *l.* to be paid to the said *D. H.* when he should be thereunto requested; yet the said *T.* in his life-time, and the said *H. F.* after the death of the said *T. W.* although often required, had not rendered the said 40 *l.* to the said *D. H.* but had intirely refused to render the same to him, and the said *H. F.* then refused to render the same to the said *D. H.* and unjustly detained; wherefore he then said that he was injured, and had damage to the value of 40 *l.* and thereof he brought suit, &c. And he then brought here into court the said writing, which testified the said debt in form aforesaid, the date whereof was on the day and year aforesaid, &c. And the said *H.* by *G. M.* his attorney came and defended the force and injury, when, &c. and the same attorney then said that he was not informed by the same *H F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *D. H.* and he said nothing else thereupon; whereby the said *D. H.* remained thereupon undefended against the said *H. F.* Therefore it was considered by the same court, that the said *D. H.* should recover against the said *H. F.* his said debt, and his damages by the

And judgment against him by Non informatus.

occafion of the detaining that debt, to 40*s.* adjudged by the court here to the faid *D. H.* by his affent to be levied of the goods and chattels which were the faid *T. W.*'s at the time of his death in the hands of the faid *T.* to be adminiftered, if he had fo much in his hands to be adminiftered, and if he had not, then the faid damages to be levied of the proper goods and chattels of the faid *H.* and that the faid *H. F.* fhould then be in mercy, *&c.* as by the record and procefs thereupon remaining in the fame court of our faid lord the king here plainly appeareth: Which faid judgment fo as aforefaid obtained, was obtained for a true and juft debt, and ftill remaineth in its full force and effect, no ways reverfed or annulled; and the faid debt and damages ftill remain in arrear unpaid to the faid *D.* *And* the faid *H. F.* further faith, that the faid *T. W.* in his life-time, *to wit*, on the faid 6th day of *September* in the 32d year of the reign of our faid lord the prefent king, at *H.* aforefaid, by his certain other writing obligatory acknowledged himfelf to be bound to the faid *D. H.* in other 40*l.* to be paid to the faid *D. H.* when he fhould be thereunto required; which faid writing obligatory laft mentioned was alfo made by the faid *T.* to the faid *D. H.* for another true and juft debt, and which at the time of the death of the faid *T. W.* was no ways paid or fatisfied by the faid *T. W.* to the faid *D. H.* and the fame writing obligatory ftill remaineth in its full force and effect; and the faid debt at the

Another bond entered into by the teftator.

time

time of the death of the ſaid *T. W.* was in arrear, and ſtill is in arrear unpaid to the ſaid *D. H.* *And* the ſaid *H. F.* further ſaith, that the ſaid *T. W.* in his life-time, *to wit*, on the ſaid 6th day of *September* in the ſaid 32d year of the reign of our ſaid lord the preſent king, at the town of *H* aforeſaid, by his certain other writing obligatory acknowledged himſelf to be bound to the ſaid *D. H.* in other 40*l.* of lawful money of *England*, to be paid to the ſaid *D.* when he ſhould be thereunto required; which ſaid writing obligatory laſt mentioned was alſo made by the ſaid *T.* to the ſaid *D.* for another true and juſt debt, and which at the time of the death of the ſaid *T. W.* was no ways paid or ſatisfied by the ſaid *T. W.* to the ſaid *D. H.* and the ſame writing obligatory' ſtill remaineth in its full force and effect; and that debt at the time of the death of the ſaid *T. W.* was in arrear, and ſtill is in arrear unpaid to the ſaid *D. H.*

Another bond entered into by the teſtator.

And the ſaid *H. F.* further ſaith, that the ſaid *T. W.* in his life-time, *to wit*, on the ſaid 6th day of *September* in the ſaid 32d year of the reign of our ſaid lord the preſent king, at *H.* aforeſaid, by his certain other writing obligatory acknowledged himſelf to be bound to the ſaid *D. H.* in other 40*l.* of like lawful money of *England*, to be paid to the ſame *D. H.* when he ſhould be thereunto required; which ſaid writing obligatory laſt mentioned was alſo made by the ſaid *T. W.* in his life-time to the ſaid *D. H.*

Another bond entered into by the teſtator.

for another true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* and the same writing obligatory still remaineth in its full force and effect, and that debt at the time of the death of the said *T. W.* was in arrear, and still is in arrear unpaid to the said *D. H.*

Rent due by testator on a lease parol.

And the said *H. F.* further saith, that the right honourable *E.* earl of *S.* on the 25th day of *March* in the year of our Lord 1677, at the town of *H.* in the county aforesaid, demised to the said *T. W.* in his life-time one messuage called the priory-house, one dove-house, one close of pasture called the priory-close, one other close of pasture called *Jeas Grove*, one other close or pasture called *Straughton's Grove*, one other close called *Middle St. Herbert's*, and three other closes of pasture called the *Infield closes*, with the appurtenances, within the parish of *St. Mary* in the town of *H.* aforesaid; To have and occupy the said tenements to the said *T. W.* from the said 25th day of *March* in the year of our Lord 1677, aforesaid, until the end and term of one whole year thence next ensuing, and fully to be complete and ended, and so from year to year, so long as it should please both the said parties: Rendering therefore yearly, so long as the said *T. W.* should hold and occupy the said tenements with the appurtenances, by virtue of the said demise, to the said earl and his assigns 56 *l.* of lawful money of *England*,

land, to be paid at the feasts of *St. Michael* the archangel, and the annunciation of the blessed Virgin *Mary*, by equal portions; by virtue of which said demise the said *T.* in his life-time, on the 26th day of *March* in the year of our Lord 1677, aforesaid, entered into the said tenements, with the appurtenances, and was possessed thereof and occupied the said tenements by the space of three years and the half of one year thence next ensuing, and 56 *l.* of the rent aforesaid at the feast of *St. Michael* the archangel last past for one whole year then ended, were in arrear unpaid by the said *T. W.* in his life-time to the said earl; which said 56 *l.* for the rent aforesaid, so as aforesaid due, were a true and just debt, and at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said earl; whereby the said earl, after the death of the said *T. W.* (the same debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 33d year of the reign of our lord the present king, in the court of our said lord the king before Sir *Francis North*, knt. and his companions, then justices of our said lord the king of the bench here, *to wit*, at *W.* impleaded the said *H. F.* after the death of the said *T. W.* of and for the said 56 *l.* then and still unpaid, by the writ of our said lord the king of debt returnable and returned in the same court; in which said plea the said parties appearing in the same court, the said earl by *J. R.* his attorney then said, that he the same earl on the 25th day of

Defendant impleaded thereon.

March in the year of our Lord 1677, at *H.* aforesaid, had demised to the said *T. W.* in his life-time one messuage called the priory-house, one, &c. (*ut supra*) with the appurtenances, within the parish of *St. Mary* in *H.* aforesaid; To hold and occupy to the said *T. W.* from the said 25th day of *March* in the year of our Lord 1677, aforesaid, unto the full end and term of one whole year thence next ensuing and fully to be complete and ended, and so from year to year so long as it should please both the said parties; rendering therefore yearly, so long as the said *T. W.* should occupy the said tenements with the appurtenances, to the said earl and his assigns 56*l.* of lawful money of *England*, to be paid at the feast of St. *Michael* the archangel, and the annunciation of the blessed Virgin *Mary*, by equal portions: By virtue of which said demise the said *T. W.* entered into the said tenements with the appurtenances, and was possessed thereof and occupied the same tenements by the space of three years and the half of one year, and 56*l.* of the rent aforesaid were in arrear unpaid by the said *T. W.* to the said earl at the feast of St. *Michael* the archangel last past, for one whole year then ended, whereby an action accrued to the said earl to demand and have of the said *T. W.* in his life-time the said 56*l.* Yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* altho' often requested, had not then rendered, nor had either of them rendered the said 56*l.* but they

they had to that time refused to render the same to him, and the said *H.* then refused to render the same to him, and unjustly detained the same: Whereupon he then said that he was injured, and had damages to the value of 40 *l.* And therefore he then brought suit. *And* the said *H. F.* by *G. M.* his attorney came and defended the force and injury, when, &c. and the same attorney then said that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H.* to the said earl, and said nothing else thereupon; whereby the said earl remained thereupon undefended against the said *H. F.* Therefore it was then considered by the said court, that the said earl should recover against the said *H. F.* his said debt, and his damages by occasion of the detaining that debt to 40 *s.* adjudged by the court here to the said earl, by his assent, to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administred; if he had so much in his hands to be administred; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should then be in mercy, &c. as by the record and proceedings thereupon remaining in the court of our said lord the king here may more fully appear: Which said judgment so as aforesaid obtained, was also obtained for a true and just debt, and still remaineth in its full force and effect, no way reversed or annulled;

And judgment against him by Non sum informatus.

led; and the said debt and damages still remain in arrear unpaid to the said earl. *And* the said *H. F.* further saith, that the said *T. W.* in his life-time, *to wit*, on the 4th day of *December* in the 30th year of the reign of our said lord the present king, at *H.* aforesaid, accounted together with one *D. W.* gent. of divers sums of money before due and unpaid by the said *T W.* to the said *D. W.* and upon that accounting the said *T. W.* in his life-time was found in arrearage to the said *D. W* in 96 *l* of lawful money of *England*; and the said *T. W.* in his life-time afterwards satisfied the said *D. W.* 54 *l.* 0 *s.* and 8 *d.* thereof, and 41 *l.* 13 *s.* and 4 *d.* the residue of the said 96 *l.* were a true and just debt of the said *T. W.* at the time of his death, and no ways paid or satisfied by the said *T. W* to the said *D W.* at the time of the death of the said *T. W.* *Whereby* the said *D. W.* after the death of the said *T. W.* (the same residue of the said debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 33d year of the reign of our said lord the king, in the court of our said lord the king before Sir *Francis North*, knt. and his companions, then justices of our said lord the king of the bench here, *to wit*, at *W.* aforesaid, impleaded the said *H. F.* of and for the said 41 *l.* 13 *s.* and 4 *d* residue of the said 96 *l.* by the writ of our said lord the king of debt returnable and returned in the same court: In which said plea the said parties appearing in the same court, the said *D. W.* by

Testator indebted upon an Insimul computasset.

Defendant impleaded thereon.

by *J. R.* his attorney said, that whereas the said *T. W.* in his life-time, *to wit*, on the said 4th day of *December* in the said 30th year of the reign of our said lord the present king, accounted together with the said *D. W.* of divers sums of money before due and unpaid by the said *T. W.* to the said *D. W.* and upon that accounting the said *T. W.* in his life time was found in arrear to the said *D. W.* in 96 *l.* of lawful money of *England*, whereby an action accrued to the said *D. W.* to demand and have of the said *T. W.* in his life time the said 96 *l.* and the said *T. W.* in his life time afterwards satisfied to the said *D. W.* 54 *l.* 6 *s.* and 8 *d.* thereof: Yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* although often requested, have not rendered, nor hath either of them rendered the said 41 *l.* 13 *s* and 4 *d.* residue of the said 96 *l.* to the said *D. W.* but they had to that time refused, and the said *H. F.* then refused to render the same to him, and unjustly detained: Wherefore he said that he was injured, and had damage to the value of 40 *l.* And thereof he then brought suit, *&c.* *And* the said *H. F.* by *G. M.* his attorney came and defended the force and injury when, *&c.* and said that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *D. W.* and he said nothing else thereupon; whereby the said *D. W.* remained thereupon undefended against the said *H. F.* Therefore it was considered that the

And judgment against him by **Non sum informatus.**

the ſaid *D. W.* ſhould recover againſt the ſaid *H. F.* his ſaid debt, and his damages by the occaſion of the detaining of that debt to 50*s.* adjudged by the court here to the ſaid *D.* by his aſſent, to be levied of the goods and chattels which were of the ſaid *T. W.* at the time of his death in the hands of the ſaid *H. F.* to be adminiſtred, if he had ſo much thereof in his hands to be adminiſtred; and if he had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *H. F.* and that the ſaid *H. F.* ſhould be in mercy, *&c.* as by the record and proceedings thereupon remaining in the ſame court of our ſaid lord the king here more fully appeareth: Which ſaid judgment ſo as aforeſaid obtained, was alſo obtained for a true and juſt debt, and ſtill remaineth in its full force and effect, no ways reverſed or annulled, and the ſaid debt and damages are ſtill in arrear unpaid to the ſaid *D. W.* *And* the ſaid *H. F.* further ſaith that the ſaid *T. W.* in his life-time, *to wit*, on the 2d day of *November* in the 32d year of the reign of our ſaid lord *Charles* II. now king of *England*, &c. at the town of *H.* accounted together with one *H. A.* of divers ſums of money before due and unpaid by the ſaid *T. W.* to the ſaid *H. A.* and upon that accounting the ſaid *T. W.* in his life-time was found in arrear to the ſaid *H. A.* in 43*l.* 18*s.* and 4*d.* to be paid to the ſaid *H. A.* when he ſhould be thereunto afterwards requeſted; which ſaid 43*l.* 18*s.* and 4*d.* ſo as aforeſaid found in arrear upon the ſaid

Teſtator indebted on an Inſimul computaſſet.

ſaid accounting, were a true and juſt debt, and were no ways paid or ſatisfied by the ſaid *T. W.* to the ſaid *H. A.* at the time of the death of the ſaid *T. W.* *Whereby* the ſaid *H. A.* after the death of the ſaid *T. W.* (the ſame debt not being ſatisfied) *to wit*, in *Eaſter* term, in the 33d year of the reign of our ſaid lord the preſent king, in the court of the ſaid lord the king before Sir *Francis North*, knt. and his companions, then juſtices of our ſaid lord the king of the bench here, *to wit*, at *W.* impleaded the ſaid *H. F.* of and for the ſaid 43 *l.* 18 *s.* 4 *d.* by the writ of our ſaid lord the king of debt returnable and returned in the ſame court: in which ſaid plea the ſaid parties appearing in the ſame court, the ſaid *H. A.* by *J. R.* his attorney ſaid, that whereas the ſaid *T. W.* in his life-time, *to wit*, on the 2d day of *November* in the 32d year of the reign of our ſovereign lord *Charles* the ſecond, now king of *England*, &c. at the town of *H.* accounted together with the ſaid *H. A.* of divers ſums of money before due and unpaid by the ſaid *T. W.* to the ſaid *H. A.* and upon that accounting the ſaid *T. W.* in his life-time was found in arrear to the ſaid *H. A.* in the ſaid 43 *l.* 18 *s.* and 4 *d*, to he paid to the ſaid *H.* when he ſhould be afterwards thereunto requeſted; whereby an action accrued to the ſaid *H. A.* to demand and have of the ſaid *T. W.* in his life-time the ſaid 43 *l.* 18 *s.* and 4 *d.* yet the ſaid *T. W.* in his life-time, and the ſaid *H. F.* after the death of the ſaid *T. W.* although often requeſted, had

Defendant impleaded thereon.

had not rendered, nor had either of them rendered the ſaid 43*l.* 18*s.* and 4*d.* to the ſaid *H. A.* but they had to that time refuſed, and the ſaid *H. F.* then refuſed to render the ſame to him, and unjuſtly detained: Whereupon he then ſaid that he was injured, and had damage to the value of 40*l.* And thereof he then brought ſuit, &c. *And* the ſaid *H. F.* by *G. M.* his attorney came and defended the force and injury when, &c. and the ſame attorney ſaid that he was not informed by the ſaid *H. F.* his maſter of any anſwer to be given in the ſaid plaint for the ſaid *H. F.* to the ſaid *H. A.* and he ſaid nothing elſe thereupon; whereby the ſaid *H. A.* remained thereupon undefended againſt the ſaid *H. F.* Therefore it was conſidered that the ſaid *H. A.* ſhould recover againſt the ſaid *H. F.* his ſaid debt, and his damages by occaſion of the detaining that debt to 40*s.* adjudged by the court here to the ſaid *H. A.* by his aſſent, to be levied of the goods and chattels which were of the ſaid *T. W.* at the time of his death in the hands of the ſaid *H. F.* to be adminiſtred, if he had ſo much thereof in his hands to be adminiſtred; and if he had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *H. F.* and that the ſaid *H. F.* ſhould be in mercy, &c. as by the record and proceedings thereupon remaining in the ſaid court of our ſaid lord the king here more fully appeareth; which ſaid judgment ſo as aforeſaid obtained, was obtained for a true and juſt debt, and ſtill remaineth in its full

Judgment againſt him by Non ſum informatus.

full force, and effect, no ways reversed or annulled, and the said debt and damages still remain in Arrear unpaid to the said *H. A.* *And* the said *H. F.* further saith, that one *J. F.* gent. on the 20th day of *April* in the year of our Lord 1677, at *H.* aforesaid, demised to the said *T. W.* a close of land called the Back-yard, with the appurtenances, adjoining to a certain messuage then in the occupation of the said *T. W.* within the parish of *St. Mary* in the town of *H.* aforesaid; To hold and occupy to the said *T. W.* from the feast of the Annunciation of the blessed Virgin *Mary* then last past, unto the end and term of ten years thence next ensuing, and fully to be complete and ended: Rendering therefore yearly during the said term to the said *J. F.* and his assigns 5 *l.* of lawful money of *England*, to be paid at the feasts of *St. Michael* the archangel and the Annunciation of the blessed Virgin *Mary*, by equal portions; by virtue of which demise the said *T. W.* in his life-time entered into the said close with the appurtenances, and was possessed thereof, and 5 *l.* of the said rent was in arrear unpaid by the said *T. W.* to the said *J.* at the feast of *St. Michael* the archangel last past, for one whole year then ending; which said 5 *l.* for the said rent so as aforesaid due. were his true and just debt, and which was no ways paid or satisfied by the said *T. W.* to the said *J.* at the time of the death of the said *T. W.* *Whereby* the said *J. F.* after the death of the said *T.* (the said debt not being satisfied) *to wit*, in the term

Rent due by testator on a lease.

Defendant impleaded thereon.

term of the *Holy Trinity* in the 33d year of the reign of our sovereign lord the present king, in the court of our said lord the king before Sir *Francis North*, knt. and his companions, then justices of our said lord the king of the bench here, *to wit*, at *W*. impleaded the said *H F*. after the death of the said *T. W*. of and for the said 5*l*. then and yet unpaid, by the writ of our lord the king of debt returnable and returned in the same court: In which said plea the said parties appearing in the same court, the said *J. F*. by *J. R*. his attorney said, that whereas the said *J. F*. on the 20th day of *April* in the year of our Lord 1678, aforesaid, at *H*. aforesaid, had demised to the said *T. W*. one close of land called the Back-yard with the appurtenances, adjoining to a certain messuage then in the occupation of the said *T. W*. within the parish of *St. Mary* in *H*. To hold and occupy to the said *T. W*. from the feast of the Annunciation of the blessed Virgin *Mary* then last past, unto the end and term of ten years thence next ensuing, and fully to be complete and ended: Rendering therefore yearly during the said term, to the said *J. F*. and his assigns, 5 *l*. of lawful money of *England*, to be paid at the feasts of *St. Michal* the archangel and the Annunciation of the blessed Virgin *Mary*, by equal portions; by virtue of which said demise the said *T. W*. in his life-time entered into the said close with the appurtenances, and was possessed thereof, and 5 *l*. of the said rent were in arrear unpaid by the said *T. W*. in his life-time

to

to the said *J. F.* at the feast of *St. Michael* the archangel last past, for one whole year then ended, whereby an action accrued to the said *J. F.* to demand and have of the said *T. W.* in his life-time the said 5*l.* Yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* altho' often requested, had not then rendered, nor had either of them rendered the said 5*l.* to the said *J. F.* but they had to that time refused, and the said *H. F.* then refused to render the same to him, and unjustly detained: Wherefore he said that he was injured, and had damage to the value of 40*s.* And thereof he then brought suit, &c. *And* the said *H. F.* by *G. M.* his attorney came and defended the force and injury when, &c. and the said attorney then said, that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *J. F.* and he said nothing else thereupon; whereby the said *J. F.* remained thereupon undefended against the said *H. F.* Therefore it was considered by the said court, that the said *J. F.* should recover against the said *H. F.* his said debt, and his damages by occasion of the detaining that debt, to 40*s.* adjudged by the court here to the said *J. F.* by his assent, to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administred, if he had so much thereof in his hands to be administred; and if he had not, then the said damages to be levied of the proper goods

And judgment against him by Non sum informatus.

goods and chattels of the said *H. F.* and that the said *H. F.* should then be in mercy, *&c.* as by the record and proceedings thereon remaining in the said court of our said lord the king here more fully may appear: Which said judgment so as aforesaid obtained, was obtained for a true and just debt, and which still remaineth in its full force and effect, no ways reversed or annulled, and the said debt and damages still remain in arrear unpaid to the said *J. F.* *And* the said *H. F.* further saith, that the said *T. W.* in his life-time, *to wit*, on the 9th day of *November* in the 23d year of the reign of our said lord the now king, at *H.* aforesaid, was indebted to the said *J. F.* in 36*l.* 7*s.* and 3*d.* of lawful money of *England*, for divers wares and merchandizes of the said *J. F.* before that time bargained and sold to the said *T. W.* which said 36*l.* 7*s.* and 3*d.* were the true and just debt of the said *T. W.* at the time of his death, and were no ways paid or satisfied by the said *T. W.* to the said *J. F.* at the time of the death of the said *T. W.* *Whereby* the said *J. F.* after the death of the said *T.* (the same debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 33d year of the reign of our sovereign lord the present king, in the court of our said lord the king before Sir *Francis North*, knt. and his companions, then justices of our said lord the king of the bench here, *to wit*, at *W.* aforesaid, impleaded the said *H. F.* of and for the said 36*l.* 7*s.* and 3*d.* by the writ of our said lord the king of debt returnable and re-

Testator indebted for goods sold.

Defendant impleaded thereon.

turned in the ſame court; in which ſaid plea the ſaid parties appearing in the ſame court, the ſaid *J. F. by J. R.* his attorney ſaid, that whereas the ſaid *T. W.* in his life-time, *to wit*, on the 9th day of *November* in the 32d year of the reign of our ſovereign lord the preſent king, at *H.* aforeſaid, had bought of the ſaid *J. F.* eighty-ſix dozen and five pounds of candles for 21 *l.* and 10 *s.* ten dozen of ſoap for 40 *s.* and 3 *d.* fourteen pounds of tobacco for 25 *s.* [ſeveral other goods in like manner ſpecified] to be paid to the ſaid *J. F.* when he ſhould be thereunto requeſted; which ſaid ſeveral ſums of money in the whole amount to 36 *l.* 7 *s.* and 3 *d.* Yet the ſaid *T. W.* in his life-time, and the ſaid *H. F.* after the death of the ſaid *T. W.* although often requeſted, had not then rendered, nor had either of them rendered the ſaid 36 *l.* 7 *s.* and 3 *d.* to the ſaid *J. F.* but had to that time refuſed, and the ſaid *H. F.* then refuſed to render the ſame to him, and unjuſtly detained: Wherefore he then ſaid that he was injured, and had damage to the value of 40 *l.* And thereof he then brought ſuit, &c. *And* the ſaid *H. F.* by *G. M.* his attorney came and defended the force and injury when, &c. and the ſaid attorney then ſaid, that he was not informed by the ſaid *H. F.* his maſter of any anſwer to be given in the ſaid plaint for the ſaid *H. F.* to the ſaid *J. F.* and he ſaid nothing elſe thereupon; whereby the ſaid *J. F.* remained thereupon undefended againſt the ſaid *H. F.* Therefore it was conſidered by the ſaid court, that the ſaid *J. F.* ſhould

And judgment againſt him by Non ſum informatus.

recover againſt the ſaid *H. F.* his ſaid debt and his damages by the occaſion of the detaining that debt, to 40*s.* adjudged by the court here to the ſaid *J. F.* by his aſſent, to be levied of the goods and chattels which were of the ſaid *T. W.* at the time of his death in the hands of the ſaid *H. F.* to be adminiſtred, if he had ſo much thereof in his hands to be adminiſtred; and if he had not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *H. F.* and that the ſaid *H. F.* ſhould be in mercy, *&c.* as by the record and proceedings thereon remaining in the ſame court of our ſaid lord the king here more fully appeareth: Which ſaid judgment, ſo as aforeſaid obtained, was obtained for a true and juſt debt, and ſtill remaineth in its full force and effect, no ways reverſed or annulled; and the ſaid debt and damages ſtill remain in arrear unpaid to the ſaid *J. F.* *And* the ſaid *H. F.* further ſaith, that the ſaid *T. W.* in his life-time, *to wit*, on the 30th day of *Auguſt* in the ſaid 32d year of the reign of our ſovereign lord the preſent king, at *H.* aforeſaid, was indebted to one *W. A.* in 78*l.* of lawful money of *England*, for divers wares and merchandizes of the ſaid *W. A.* before that time bargained and ſold to the ſaid *T. W.* in his life-time; which ſaid 78*l.* were the true and juſt debt of the ſaid *T. W.* at the time of his death, and were no ways paid or ſatisfied by the ſaid *T. W.* to the ſaid *W. A.* at the time of the

Teſtator indebted for goods bought.

4 death

death of the ſaid *T. W.* *Whereby* the ſaid *W. A.* after the death of the ſaid *T. W.* (the ſaid debt not being ſatisfied) *to wit*, in the term of the *Holy Trinity* in the 32d year aforeſaid, in the court of our ſaid lord the king, before the king himſelf then being at *W.* aforeſaid, impleaded the ſaid *H. F.* of and for the ſaid 78*l.* by his certain bill againſt the ſaid *H. F.* in the cuſtody of the marſhal, &c. of a plea of debt, and there were then pledges of proſecuting, *to wit*, *J. D.* and *R. R.* by which ſaid bill the ſaid *W. A.* complained againſt the ſaid *H. F.* executor of the teſtament of the ſaid *T. W.* deceaſed, in the cuſtody of the marſhal of the *Marſhalſea* of our lord the king, before the king himſelf, of a plea that he render to him 78*l.* of lawful money of *England*, which he unjuſtly detained from him, for that, *to wit*, that whereas the ſaid *T. W.* in his life-time, *to wit*, on the 30th day of *Auguſt* in the 32d year of the reign of our ſovereign lord *Charles* II. now king of *England*, &c. at *London* aforeſaid, *to wit*, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, had bought of the ſaid *W.* two pipes of *Canary* for 78*l.* to be paid to the ſaid *W.* when he ſhould be thereunto requeſted; yet the ſaid *T.* in his life-time, and the ſaid *H. F.* after the death of the ſaid *T. W.* although often requeſted, had not, nor had either of them then paid the ſaid 78*l.* to the ſaid *W. A.* but had to that time refuſed, and the ſaid *H F.* then refuſed to pay him the ſame, to the damage of the ſaid *W. A.* of 5*l.* And thereof

Defendant impleaded thereon in B. R.

And judgment againſt him by Non poteſt dedicere actionem.

thereof he then brought ſuit, &c. *And* the ſaid *H. F.* by *J. N.* then his attorney came and ſaid, that he could not deny the ſaid action of the ſaid *W. A.* nor but that he detained from the ſaid *W. A.* the ſaid 78 *l.* in the ſaid declaration above mentioned, in manner and form as the ſaid *W. A.* above declared againſt him: Therefore it was conſidered, that the ſaid *W. A.* recover againſt the ſaid *H.* his ſaid debt, and his damages which he ſuſtained, as well by occaſion of the detaining that debt, as for his coſts and charges by him about his ſuit in this behalf expended, adjudged to the ſaid *W. A.* by his aſſent, to be levied of the goods and chattels which were of the ſaid *T. W.* at the time of his death in the hands of the ſaid *H. F.* to be adminiſtred, if he had then ſo much thereof in his hands; and if he had not ſo much thereof in his hands, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *H. F.* and that the ſaid *H. F.* ſhould be in mercy, &c. as by the record and proceedings thereon now remaining in the ſaid court of our ſaid lord the preſent king, before the king himſelf at *W.* aforeſaid, more fully appeareth: Which ſaid judgment ſo as aforeſaid obtained, was alſo obtained for a true and juſt debt, and which ſtill remaineth in its full force and effect, no ways reverſed or annulled; and the debt and damages aforeſaid are ſtill in arrear unpaid to the ſaid *W. A.* *And* the ſaid *H. F.* further ſaith, that he hath fully adminiſtred all the goods and chattels which were of

Plene adminiſtravit præter, &c.

of the ſaid *T. W.* at the time of his death; and that he hath no goods or chattels which were of the ſaid *T. W.* at the time of his death in his hands to be adminiſtred, nor had he on the day of ſuing out the original writ of the ſaid *T. L. J. H.* and *E. C.* nor at any time afterwards, except goods and chattels to the value of 100*s.* which are bound and liable to the executions of the ſaid ſeveral judgments, and to the payment of the ſaid ſeveral ſums by the ſaid writings as aforeſaid due and unpaid; And this he is ready to verify: Wherefore he prayeth judgment, if the ſaid *T. L. J. H.* and *E. C.* ought to have their ſaid action againſt him, *&c.*

Replication, that one of the writings obligatory was conditioned for the payment of a leſs ſum at a day yet to come.

And the ſaid *T. L. J.* and *E.* ſay, that they by any thing before alledged ought not to be barred from having their ſaid action, becauſe they ſay that one writing obligatory of the ſaid three writings obligatory of 40*l.* above pleaded in bar, made to the ſaid *D. H.* by the ſaid *T. W.* in his life-time as aforeſaid, upon which judgment is not yet obtained by the ſaid *D. to wit*, the writing obligatory of the three writings obligatory above ſecondly mentioned, was made and conditioned by a condition to the ſame writing obligatory ſubſcribed, for the true and certain payment of the full and juſt ſum of 20*l.* and 18*s.* of good and lawful money of *England*, to the ſaid *D. H.* his executors, adminiſtrators or aſſigns, upon the 24th day of *June* then and now next enſuing, that then the ſaid writing obligatory ſhould be

 void;

void; And this they are ready to verify: Wherefore they pray judgment, and their damages by occasion of the premisses to be adjudged to them.

Demurrer.

And the said *H.* saith, that the plea by the said *T. J.* and *E.* in manner and form above pleaded by replying, and the matter therein contained, are not sufficient in law to maintain the action of the said *T. J.* and *E.* against the said *H. F.* To which the said *H. F.* hath no need, and is not bound by the law of the land in any manner to answer; And this he is ready to verify: Wherefore, for default of a sufficient replication in this behalf, the said *H. F.* demurreth in law, and as before prayeth judgment, and that the said *T. L. J.* and *E.* may be barred from having their said action against him the said *H. F.* &c.

Causes of demurrer.

And for causes of demurring in law upon the said plea, the said *H.* according to the form of the statute in such case lately made and provided declareth, and to the court here sheweth the following causes, *to wit:* For that the said *T. L. J.* and *E.* by their said replication have not answered any thing as to two writings obligatory of the said three writings obligatory above pleaded in bar, nor as to the said several judgments so as aforesaid pleaded in the said bar of the said *H. F.* as by the law of the land the said *T. J.* and *E.* ought by replying to have alledged; and also for that, that the said *T. L. J.* and *E.* by their said replication do not sufficiently answer to the said plea of the said *H.* nor do they confess and avoid, nor traverse

erse or deny the matter in the bar of the said *H.* so as aforesaid pleaded; and also for that, that the said *T. J.* and *E.* by their said replication ought to have pleaded further in form following, or to the like effect, *to wit*, that the said *H. F.* on the day of suing out the said original writ of the said *T. J.* and *E.* had divers goods and chattels which were of the said *T. W.* at the time of his death in the hands of him the said *H. F.* to be administred, to the value of the said 200*l.* in the said declaration specified, besides goods and chattels which were liable and bound by the said executions of the said several judgments, and to the payment of the said 20*l.* and 18*s.* in the said condition of the said writing mentioned, and to the said several sums of money by said other writing as aforesaid due, so that the said *H.* might have joined issue thereupon in due form of law.

Joinder in demurrer.

And the said *T. L. J.* and *E.* for that they have above alledged sufficient matter in law for them the said *T. L. J.* and *E.* to maintain their action against the said *H.* which they are ready to verify, which said matter the said *H.* doth not deny, nor any way answer thereto, but intirely refuseth to admit the verifying the same, as before, pray judgment, and their damages by occasion of the premisses to be adjudged to them, &c. *And* because the justices here would advise themselves of and upon the premisses before they give judgment thereon, a day is given to the said parties here until from the day of St. *Michael* in three weeks, to hear their judgment

Continuance by Cur. advisar. vult.

ment thereupon, for that the ſaid juſtices here are not yet, &c. *

Declaration in caſe ſur aſſ. on a feigned iſſue touching a Modus decimandi.

—— *to wit*, *C. P.* late of, &c. was attached to anſwer the right honourable *D.* lord *H.* of a plea of treſpaſs upon the caſe: And whereupon the ſaid *D.* lord *H.* by *M. H.* his attorney complaineth, Wherefore *whereas* on the 21ſt day of *December* in the 30th year of the reign of our lord the preſent king, at the pariſh of K. in the county aforeſaid, a certain diſcourſe was moved and had between the ſaid *D.* lord *H.* and the ſaid *C.* of and concerning three tenements of the ſaid *D.* lord *H.* in the pariſh of *K.* aforeſaid, with the lands thereunto reſpectively appertaining, formerly parcel of the poſſeſſion of the late diſſolved monaſtery of *Bellalanda*, otherwiſe *Byland*, in the county aforeſaid, *to wit*, one tenement with the appurtenances then in the poſſeſſion of one *J. R.* another tenement with the appurtenances then in the poſſeſſion of one *R. M.* and another tenement with the appurtenances called *Great Combe*, then in the poſſeſſion of one *C. B.* Upon which ſaid diſcourſe the ſaid *D.* lord *H.* aſſerted and affirmed, that the proprietors and tenants of the ſaid tene-

* Judgment for the defendant, becauſe the plaintiff did not ſay in his replication that the defendant had aſſets *ultra*, to pay the 20*l.* for, if he had not, he is not obliged to pay the plaintiff the debt upon contract before the debt upon bond due at a day yet to come. 3 *Lev.* 57. S C.

ment

ment in the possession of the said *J. R.* from the time to the contrary whereof the memory of man is not, have paid and been used and bound to pay to the rector of the parish-church of *K.* aforesaid, for the time being, eight fleeces of wool, and 4 *s.* of lawful money of *England*, yearly and every year, in lieu and compensation of all and all manner of tithes growing, increasing and renewing upon the same tenement, and the lands thereunto belonging, within the parish aforesaid; *And* that for the whole time aforesaid the proprietors and tenants of the said tenement in the possession of the said *R. M.* have paid, and been used and bound to pay to the rector of the parish-church of *K.* aforesaid, for the time being, 1 *s.* 5 *d.* of lawful money of *England*, yearly and every year, in lieu and compensation of all and all manner of tithes growing, increasing, and renewing upon the same tenement and the lands thereunto belonging, within the parish aforesaid; *And* also that all the proprietors and tenants of the said tenement called *Great Combe*, from the time to the contrary whereof the memory of man is not to the contrary, have paid, and been used and bound to pay to the rector of the parish-church of *K.* aforesaid, for the time being, ten fleeces of wool and two lambs, at the feast of St. *John* the Baptist, yearly and every year, in lieu and compensation of all and all manner of tithes growing, increasing and renewing upon the same tenement, and the lands thereunto belonging, within the parish aforesaid: Which said

said several prescriptions and manners of tithing the said *C.* then and there denied, asserting that the tithes for the same tenements are and have been payable in kind. *And* thereupon the said *C.* on the same 21st day of *December* in the 30th year aforesaid, at the parish of *K.* aforesaid, in consideration that the said *D.* lord *H.* at the special instance and request of the said *C.* had then and there paid to the said *C.* 50*s.* of lawful money of *England*, undertook and faithfully promised the said *D.* lord *H.* that if such prescription and manner of tithing concerning the said tenement in the possession of the said *J. R.* as the said *D.* lord *H.* then and there had asserted, was true, then he the said *C.* would well and truly pay 40*s.* of like lawful money to the said *D.* lord *H.* when afterwards he should be thereunto requested; and also, that if such prescription and manner of tithing concerning the said tenement in the possession of the said *R. M.* as the said *D.* lord *H.* then and there had asserted, was true, then he the said *C.* would well and truly pay other 40*s.* of like lawful money to the said *D.* lord *H.* when afterwards he should be thereunto requested: And further, that if such prescription and manner of tithing concerning the said tenement called *Great Combe*, as the said *D.* lord *H.* then and there had asserted, was true, then he the said *C.* would well and truly pay other 40*s.* of like lawful money to the said *D.* lord *H.* when afterwards he should be thereunto requested. *And* the said *D.* lord *H.*

Assumpsit.

Averment.

H. in fact saith, that at the time of the said discourse such respective prescriptions and manners of tithing concerning the several and respective tenements aforesaid, as were asserted by the said *D.* lord *H.* as aforesaid, were and still are true; whereof the said *C.* afterwards, *to wit*, on the last day of *December* in the 30th year aforesaid, at the parish of *K.* aforesaid, had notice: *Nevertheless* the said *C.* no ways regarding his said several promises and undertakings, but contriving and fraudulently intending to deceive and defraud the said *D.* lord *H.* in the premisses, hath not yet paid the said several sums, amounting in the whole to 6 *l.* to the said *D.* lord *H.* (although the said *C.* on the 10th day of *January* in the 30th year aforesaid, and often afterwards, at the parish of *K.* aforesaid, was requested to pay the same); but he has hitherto intirely refused, and still doth refuse to pay him the same: Wherefore the said *D.* lord *H.* saith that he is injured, and hath damage to the value of 20 *l.* And thereof he bringeth suit, &c. *Breach.*

And the said *C.* by —— his attorney cometh and defendeth the force and injury, when, &c. and saith that the said *D.* lord *H.* ought not to have his said action against him, because he saith, that well and true it is that he did undertake in manner and form as the said *D.* lord *H.* hath above declared against him; but the said *C.* further saith, as to the first promise in the said declaration specified, that the tithes from time to time growing, increasing and renewing upon *Plea.*

upon the tenement in the possession of the said *J. R.* always have been paid, and ought to be paid in kind; *Without this*, that the proprietors and tenants of the same tenements, from the time to the contrary whereof the memory of man is not, have been used and bound to pay to the rector of the parish-church of *K.* aforesaid, for the time being, eight fleeces of wool, and 4 *s.* of lawful money of *England*, yearly and every year, in lieu and compensation of tithes, growing, increasing and renewing upon the same tenement and the lands thereunto belonging, within the said parish, as the said *D.* lord *H.* above in his said declaration has alledged: And this he is ready to verify. And as to the second promise, *&c.* [the plea to the second and third promises respectively as above, the traverse to each in the very words of the prescription.] Wherefore he prayeth judgment, if the said *D.* lord *H.* ought to have his said action against him, *&c.*

Replication.

And the said *D.* lord *H.* *as to* the plea of the said *C.* as to the first promise in the said declaration specified, saith that all the proprietors and tenants of the said tenement in possession of the said *J. R.* from the time to, *&c.* [in the words of the prescription] in manner and form as the said *D.* lord *H.* in his said declaration hath alledged; And of this he putteth himself upon the country: *And* the said *C.* doth so likewise, *&c.* *And* as to the said plea of the said *C.* as to the second promise in the said declaration specified,

fied, the ſaid *D.* lord *H.* ſaith that [in the words of the preſcription] in manner and form as the ſaid *D.* lord *H.* in his ſaid declaration hath alledged; And of this he putteth himſelf upon the country: *And* the ſaid *C.* doth ſo likewiſe, &c. *And* as to the ſaid plea of the ſaid *C.* as to the third promiſe in the ſaid declaration ſpecified, the ſaid *D.* lord *H.* ſaith, that [in the words of the preſcription] in manner and form as the ſaid *D.* lord *H.* in his ſaid declaration hath alledged; and of this he putteth himſelf upon the country: *And* the ſaid *C.* doth ſo likewiſe, &c.

Declaration in caſe Sur aſſ. *The defendant, in conſideration his elder brother would not convey lands to his younger brother, promiſes to pay him* 20 l.

—— to wit, *A. S.* late of, &c. was attached to anſwer *W. S.* of a plea of treſpaſs upon the caſe, &c. And whereupon the ſaid *W.* by *J. S.* his attorney complaineth, that *whereas H. S.* brother of the ſaid *A.* and *W.* now deceaſed, in his life-time, *to wit*, on the 9th day of *January* in the —— year of, &c. was ſeiſed in his demeſne as of fee, of and in a cloſe called *B.* lying and being in the pariſh of *G.* in the county of *Y.* and the ſaid *H.* being ſo ſeiſed thereof, and then languiſhing with a certain diſeaſe, declared that he the ſaid *H.* then intended to convey to the ſaid *W.* and his heirs for ever (the ſaid *W.* then being the youngeſt brother of the ſaid *H.*) the ſaid cloſe, unleſs the ſaid *A.* would conſent and promiſe to pay to the ſaid *W.* 20 *l.* of lawful money of *England*: Of which ſaid intention of the ſaid *H.* the ſaid *A.* afterwards, *to wit*, on the ſame day and year, at *D.* aforeſaid, having notice, the

ſaid *A.* then being brother and heir apparent of the ſaid *H.* in conſideration that the ſaid *H.* at the ſpecial inſtance and requeſt of the ſaid *A.* would forbear to convey the ſaid cloſe to the ſaid *W.* undertook, and then and there faithfully promiſed the ſaid *H.* that he the ſaid *A.* would well and truly pay to the ſaid *W.* the ſum of 20 *l.* of lawful money of *England*, when after the death of the ſaid *H.* he ſhould be thereunto requeſted. *And* the ſaid *W.* in fact ſaith, that the ſaid *H.* truſting to the ſaid promiſe and undertaking of the ſaid *A.* did forbear to convey the ſaid cloſe to the ſaid *W.* and afterwards, *to wit*, on the 15th day of *January* in the ——— year of, *&c.* at, *&c.* died without iſſue of his body begotten, whereby the ſaid cloſe deſcended to the ſaid *A.* as brother and heir of the ſaid *H.* *And alſo* whereas the ſaid *H.* in his life-time, *to wit*, on the ſaid 9th day of *January* in the ——— year of, *&c.* was ſeiſed in his demeſne as of fee, of and in a certain other cloſe in the pariſh of *D.* aforeſaid, called *B.* and the ſaid *H.* being ſo ſeiſed thereof, and then being in an ill ſtate of health, the ſaid *H.* on the ſaid 9th day of *January* in the ——— year of, *&c.* for the mutual love and affection which he then had towards the ſaid *W.* his youngeſt brother, appointed a certain deed to be written and prepared, to be executed by the ſaid *H.* by which the ſaid *H.* would convey and aſſure the ſaid other cloſe to the ſaid *W.* and his heirs for ever, in reverſion immediately after the death of the ſaid *H.* the ſaid *A.* having notice

notice thereof, and then being brother and heir apparent of the said *H.* afterwards, *to wit*, on the said 9th day of *January* in the —— year of, &c. at the parish of *D.* aforesaid, in consideration that the said *W.* at the instance and request of the said *A.* would consent and agree to prevent and obstruct the making and writing the said deed so as aforesaid appointed to be written by the said *H.* undertook, and then and there faithfully promised the said *W.* that he the said *A.* would pay to the said *W.* other 20 *l.* of lawful money of *England*, when after the death of the said *H.* he should be thereunto requested. *And* the said *W.* further in fact saith, that he the said *W.* trusting to the said promise and undertaking of the said *A.* prevented and obstructed the writing and making the said deed, *to wit*, at the parish of *D.* aforesaid; and afterwards, *to wit*, on the said 15th day of *January* in the —— year of, &c. aforesaid, the said *H.* died at the said parish of *D.* without issue of his body begotten, whereby the said close descended to the said *A.* as brother and heir of the said *H.* *Yet* the said *A.* no ways regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W.* in the premisses, hath not paid the said several sums, which amount in the whole to the sum of 40 *l.* or any part thereof, to the said *W.* (altho' after the death of the said *H.* *to wit*, on the —— day of, &c. in the —— year, &c. and often afterwards,

wards, at, &c. the said *A.* was thereunto requested by the said *W.*) but he hath hitherto intirely refused, and still doth refuse to pay him the same. Wherefore he saith he is injured, and hath damage to the value of 40 *l.* And thereof he bringeth suit, &c.

Declaration in case Sur ass. *on a promise of marriage.*

——, to wit, *J. R.* late of, &c. was attached to answer *P. P.* spinster, of a plea of trespass on the case, &c. And whereupon the said *P.* by *J. S.* her attorney complaineth. Wherefore *whereas* on the 25th day of *March* in the 8th year of the reign of our sovereign lord *George* III. now king of *England*, &c. at the castle of *York* a certain discourse was moved and had between the said *P.* and *W. P.* her father, and the said *J.* and *R. R.* his father, of a marriage to be had and solemnized between the said *P.* and the said *J.* and upon that discourse it was then and there agreed between all the said parties, that the said marriage should be had and solemnized upon the *Sunday* next after the feast of *Easter*, being the second day of *April* next ensuing, [other agreements between the fathers for portions, &c. set forth] the said *J.* after the said agreement so made, *to wit*, on the said 25th day of *March* in the year aforesaid, at the castle of *York* aforesaid, in consideration thereof, and also in consideration that the said *P.* at the special instance and request of the said *J.* had then and there undertook, and faithfully promised the said *J.* that she the said *P.* would take the said *J.* for her husband, according to the said agreement, undertook, and then and there faithfully

faithfully promised the said *P.* that he the said *J.* would marry the said *P.* according to the said agreement. And the said *P.* in fact saith, that she and the said *W* her father were always ready and often offered to perform the said agreement in all things on their and each of their parts to be performed, according to the form and effect of the said agreement. *And also whereas* the said *J.* on the 3d day of *April* in the 8th year aforesaid, at the said castle of *Y.* in consideration that the said *P.* then and still being unmarried, at the special instance and request of the said *J.* being then also unmarried, had then and there agreed with the said *J.* and undertook and faithfully promised the said *J.* that she the said *P.* would take the said *J.* for her husband, undertook, and then and there faithfully promised the said *P.* that he the said *J.* would marry the said *P.* *Neverthe-less* the said *J.* no ways regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *P.* in the premisses, did not marry the said *P.* (although on the 11th day of *April* in the 8th year aforesaid, and often before and afterwards, at the castle of *Y.* aforesaid, he was thereunto requested by the said *P.*) but the said *J.* afterwards, *to wit*, on the 2d day of *December* in the 8th year aforesaid, at the castle of *Y.* aforesaid, married one *A. L.* [an *Indeb. assumpsit*, for money lent, and an *Indeb. assumpsit* for money laid out.]

Laid over again.

Breach.

Other counts.

Plea.

And the ſaid *J.* by *L. R.* his attorney cometh and defendeth the force and injury when, &c. and ſaith that the ſaid *P.* ought not to have her ſaid action thereupon againſt him, becauſe as to the firſt promiſe in the ſaid declaration above ſuppoſed to be made, he ſaith, that after the time of the ſaid promiſe and undertaking, and before the day of ſuing out the original writ of the ſaid *P.* to *wit*, on the 30th day of *March* in the ſaid 8th year of the reign of our ſaid lord the preſent king, at the caſtle of *Y.* aforeſaid, he the ſaid *J.* requeſted the ſaid *P.* that ſhe would be ready to take the ſaid *J.* for her huſband, according to the form and effect of the ſaid agreement; but the ſaid *P.* then and there intirely refuſed to do the ſame, and ſhe was not ready to marry the ſaid *J.* on the ſaid 2d day of *April* in the ſaid declaration mentioned: *Without this*, that the ſaid *J.* refuſed to marry the ſaid *P.* according to the ſaid agreement, as the ſaid *P.* has above declared againſt him; And this he is ready to verify. *And* as to the ſecond promiſe in the ſaid declaration above ſuppoſed to be made, he ſaith, that after the time of the ſaid promiſe and undertaking, and before the day of ſuing out the original writ of the ſaid *P. to wit*, on the 10th day of *April* in the 8th year aforeſaid, at the caſtle of *Y.* aforeſaid, and often afterwards there, the ſaid *J.* was ready and offered to the ſaid *P.* to marry the ſaid *P.* but the ſaid *P.* then and there abſolutely refuſed and denied to agree or conſent thereto, and refuſed

As to firſt count, offered to marry plaintiff, but ſhe refuſed.

Traverſe.

To the ſecond count, the like.

to

to take the ſaid *J.* for her huſband: And this he is ready to verify. *And* as to the ſaid promiſe for the ſaid 30*l.* above ſuppoſed to be made, the ſaid *J.* ſaith, that he did not undertake in manner and form as the ſaid *P.* has thereupon above declared againſt him; And of this he putteth himſelf upon the country: *And* the ſaid *P.* doth ſo likewiſe. *And* as to 10*l.* parcel of the ſaid 20*l.* in the ſaid declaration mentioned, the ſaid *J.* ſaith that he did not undertake in manner and form as the ſaid *P.* hath above declared againſt him; And of this he putteth himſelf upon the country: *And* the ſaid *P.* does ſo likewiſe. *And* as to 10*l.* reſidue of the ſaid 20*l.* the ſaid *J.* ſaith that the ſaid *P.* ought not to have her ſaid action thereupon againſt him, becauſe he ſaith, that after the time of the promiſe for the ſaid 20*l.* above ſuppoſed to be made, and before the ſuing out the ſaid original writ of the ſaid *P.* *to wit*, on the 10th day of *February* in the 9th year of the reign of our lord the preſent king, at the caſtle of *Y.* aforeſaid, the ſaid *J.* offered to the ſaid *P.* the ſaid 10*l.* reſidue of the ſaid 20*l.* which ſaid 10*l.* the ſaid *P.* intirely refuſed to receive: And the ſaid *J.* further ſaith, that he at all times afterwards hitherto was and ſtill is ready to pay to the ſaid *P.* the ſaid 10*l.* and hath brought the ſame here into court ready to be paid to the ſaid *P.* if ſhe the ſaid *P.* is willing to receive the ſame; And this he is ready to verify: Wherefore he prayeth judg-

As to the third count. Non aſſumpſit.

Iſſue.

As to the fourth, Non aſſumpſit, *as to part.*

Iſſue.

As to the reſidue, a tender.

judgment if the ſaid *P.* ought to have her ſaid action thereupon againſt him, &c.

Replication as to the ſecond plea, did not offer to marry her.

And the ſaid *P.* as to the ſaid plea of the ſaid *J.* as to his ſecond promiſe and undertaking above pleaded in bar, ſaith, that by any thing therein contained ſhe ought not to be barred from having her ſaid action againſt the ſaid *J.* becauſe ſhe ſaith that the ſaid *J.* after the time of the ſaid promiſe and undertaking made, did not offer to the ſaid *P.* to marry the ſaid *P.* in manner as he in pleading hath above alledged; And this ſhe prayeth may be inquired of by the country:

Iſſue.

And the ſaid *J.* doth ſo likewiſe, &c.

A demurrer to the firſt plea.

And as to the ſaid plea of the ſaid *J.* above pleaded in bar to his ſaid firſt promiſe and undertaking, the ſaid *P.* ſaith, that the ſaid plea and the matter therein contained are not ſufficient in law to bar the ſaid *P.* from having her ſaid action againſt him; and that ſhe hath no need, and is not by the law of the land bound to anſwer to the ſaid plea in manner and form aforeſaid pleaded.

Cauſe of demurrer.

And for cauſe of demurring in law upon the ſaid plea, the ſaid *P.* according to the form of the ſtatute in ſuch caſe made and provided, ſheweth to the court here the cauſe following, *to wit*, that the traverſe in the ſaid plea contained is immaterial and ſuperfluous, and thereby a matter not traverſable, which is not alledged in the ſaid declaration, is traverſed; And this ſhe is ready to verify: Wherefore for default of a ſufficient plea of the ſaid *J.* in this behalf, the ſaid *P.* prayeth judgment, and her damages by occaſion of the

the not performing the ſaid promiſe and untaking, to be adjudged to her. *And* as to the ſaid plea of the ſaid *J.* as to the ſaid 10*l.* parcel of the ſaid 20*l.* in the ſaid declaration mentioned, ſuppoſed as aforeſaid to be tendered by the ſaid *J.* the ſaid *P.* ſaith that the ſaid *J.* ought not to be admitted to ſay that he was at all times hitherto ready to pay the ſaid 10*l.* to the ſaid *P.* becauſe ſhe ſaith, that ſhe the ſaid *P.* heretofore, *to wit*, in *Eaſter* term laſt paſt, in the court here declared in the plea aforeſaid againſt the ſaid *J.* in manner and form aforeſaid: And thereupon the ſaid *J.* in the ſame *Eaſter* term, by his ſaid attorney came and defended the wrong and injury, when, &c. and ſaving to himſelf all and all manner of advantages, exceptions and allegations whatſoever, as well to the ſaid writ as to the ſaid declaration, prayed leave thereupon to imparl here until on this day, *to wit*, on the morrow of the *Holy Trinity* thence next enſuing, and had it, &c. The ſame day was given to the ſaid *P.* here, &c. as it ſufficiently appears of record in the ſaid court of our ſaid lord the King here; And this ſhe is ready to verify by the ſaid record: Wherefore ſhe prayeth judgment, if the ſaid *J.* ought to be admitted to ſay that he was at all times hitherto ready to pay the ſaid 10*l.* to the ſaid *P.* &c.

Replication as to the tender, eſtoppel that it was pleaded after imparlance.

And the ſaid *J.* for that he hath above pleaded ſufficient matter to bar the ſaid *P.* from having her ſaid action againſt him as to the firſt promiſe in the ſaid declaration

Joinder in demurrer.

 above-

above-mentioned, which he is ready to verify, which ſaid matter the ſaid *P.* doth not deny, and hath not any ways anſwered the ſame, prayeth judgment, and that the ſaid *P.* may be barred from having her ſaid action as to the ſaid promiſe againſt him, *&c.* *And* further, the ſaid *J.* for that he hath above alledged ſufficient matter in law to bar the ſaid *P.* from having her ſaid action againſt him for the ſaid 10 *l.* reſidue of the ſaid 20 *l.* in the ſaid declaration ſpecified, and is ready to verify the ſame, which ſaid matter the ſaid *P.* doth not deny, and hath not any ways anſwered thereto, but intirely refuſeth to admit the verifying the ſame, prayeth judgment, and that the ſaid *P.* may be barred from having her ſaid action againſt him for the ſaid 10 *l.* *&c.*

Declaration by an adminiſtratrix in caſe Sur aſſ. *to pay coſts in chancery, in conſideration that the inteſtate forbore to proſecute contempts, and gave day of payment.*

Yorkſhire, to wit, *J. C.* late of, *&c.* was attached to anſwer *J. P.* adminiſtratrix of all and ſingular the goods and chattels which were of *W. P.* gent. at the time of his death, *who died inteſtate*, of a plea of treſpaſs on the caſe, *&c.* And whereupon the ſaid *J.* by [illegible] *M.* her attorney complaineth, that *whereas* the ſaid *J.* in the life-time of the ſaid *W.* *to wit*, on the —— day of, *&c.* intending to exhibit his bill of complaint in the high court of chancery of our lord the preſent king againſt the ſaid *W.* ſued out of the ſaid court of chancery, the ſaid court then being at *W.* in the county of *M.* a certain writ of our ſaid lord the king of *Subpœna*, directed to the ſaid *W.* by which ſaid writ our ſaid lord the king commanded the

2 ſaid

said *W.* that the said *W.* under the penalty of 100*l.* should be in the said court of chancery on the —— day of, &c. next ensuing, to answer to those things which then and there should be objected against him the said *W.* Which said writ afterwards, and before the return thereof, *to wit*, on the —— day of, &c. at, &c. the said *J.* caused to be delivered to the said *W.* and the said *W* at the return of the said writ appeared in the said court of Chancery, according to the command of the said writ: And afterwards such proceedings were in the same court, that 23*l.* were adjudged by the said court of Chancery to the said *W.* against the said *J.* for his costs, charges and expences, by reason and occasion of the unjust vexation of the said *J.* had and sustained by the said *W.* in the said court, as by the records and memorandums of the same, remaining at *W.* in the county of *M.* more fully appeareth. For obtaining which said 23*l.* the said *W.* afterwards, *to wit*, on the —— day of, &c. sued forth out of the same court of Chancery, the said court then being at *W.* in the county of *M.* aforesaid, a certain writ of our said lord the king of *Subpœna* directed to the said *J.* by which said writ our said lord the king firmly injoining, commanded the said *J.* that he the said *J.* immediately after the receipt of the said writ, should pay, or cause to be paid to the said *W.* or to the bearer of the said writ, the said 23*l.* and that the said *J.* should in no wise omit this, under the penalty of 100*l.* Which said writ of *Subpœna* last mentioned, the said

W. afterwards, *to wit*, on the —— day of, *&c.* delivered to *A. B.* then and ſtill one of the attornies of our lord the king of the bench here, and then the ſaid *W.*'s ſolicitor in the ſaid ſuit in Chancery, to the intent that the ſaid *A. B.* ſhould demand and receive of the ſaid *J.* the ſaid 23 *l.* to the uſe of the ſaid *W.* And afterwards the ſaid *A.* in the life-time of the ſaid *W.* *to wit*, on the ſame day and year laſt aforeſaid, at, *&c.* ſhewed to the ſaid *J.* the ſaid laſt mentioned writ of *Subpœna*, directed to the ſaid *J.* as aforeſaid, and then and there demanded of the ſaid *J.* the ſaid 23 *l.* according to the tenor of the ſaid writ. *And* thereupon the ſaid *J.* on the ſame day and year, at, *&c* in conſideration that the ſaid *A* at the ſpecial inſtance and requeſt of the ſaid *J.* would ſtay one week for the ſaid 23 *l.* and would not ſue forth any writ of attachment out of the ſaid court of Chancery againſt the ſaid *J.* for not paying the ſaid 23 *l.* upon the demand aforeſaid, undertook, and then and there faithfully promiſed the ſaid *A. B.* that he the ſaid *J.* would well and truly pay the ſaid 23 *l.* to the ſaid *W.* when he the ſaid *J.* after the end of the ſaid week then next enſuing ſhould be thereunto requeſted. *And* the ſaid *J.* in fact ſaith, that the ſaid *W.* and *A. B.* truſting to the ſaid promiſe and undertaking of the ſaid *J.* did ſtay one week from thence next enſuing for the ſaid 23 *l.* and did not ſue forth, nor did either of them ſue forth at any time any writ of attachment againſt the ſaid *J.* for or concerning the ſaid

Aſſumpſit.

Averment, conſideration performed.

23 *l.*

22 *l.* for the non-payment thereof: [*Indeb. ass.* for 20 *l.*] *Yet* the ſaid *J.* not regarding his ſeveral promiſes and undertakings aforeſaid, but contriving and fraudulently intending to deceive and defraud the ſaid *W.* in his life-time, and the ſaid *J.* after the death of the ſaid *W.* hath not paid the ſaid ſeveral ſums of money, amounting in the whole to, *&c.* either to the ſaid *W.* in his life-time, or to the ſaid *J.* after the death of the ſaid *W.* (to which *J* adminiſtration of all and ſingular the goods and chattels, rights and credits which were of the ſaid *W.* at the time of his death, after the death of the ſaid *W.* *to wit*, on the —— day of, *&c.* at, *&c* by, *&c.* was in due manner committed) but intirely refuſed to pay the ſame to the ſaid *W.* in his life-time, and to the ſaid *J.* after the death of the ſaid *W.* and ſtill refuſeth to pay the ſame to the ſaid *J.* although the ſaid *J* was thereunto requeſted by the ſaid *W* in his life-time, and by the ſaid *J.* after the death of the ſaid *W.* *to wit*, on the ——— day of, *&c.* at, *&c.* Wherefore ſhe ſaith ſhe is injured, and hath damage to the value of 40 *l.* And thereof ſhe bringeth ſuit, *&c.* *And* ſhe bringeth here into court the ſaid letters of adminiſtration, which teſtify the committing the ſaid adminiſtration in form aforeſaid, *&c.*

Breach.

Adminiſtration committed.

Profert.

— to wit, *A. B.* late of, *&c.* was attached to anſwer *C. D* of a plea of treſpaſs on the caſe, *&c.* And whereupon the ſaid *C. D.* by —— — his attorney complaineth, wherefore *whereas* on the —— day of, *&c.* at,

Declaration in caſe **Sur aſſumpſit** *to perform an award.*

at, *&c.* a certain ſuit was moved and de-pending between the ſaid *A.* and *C.* con-cerning, *&c.* To compromiſe and deter-mine which, as well the ſaid *A.* as the ſaid *C.* put themſelves upon the arbitration of *E. F.* and *G. H.* arbitrators indifferently cho-ſen between them to award, order and ad-judge of and concerning the ſaid ſuit, ſo that the award ſhould be given in by parol or in writing under the hands and ſeals of the ſaid *E.* and *G.* before the —— day of, *&c.* and if the ſaid arbitrators ſhould refuſe or omit to make any award, order or judgment con-cerning the premiſſes by the time aforeſaid, then upon the arbitration of *J. K.* an um-pire indifferently choſen and named by the ſaid *A.* and *C.* to award of and concerning the premiſſes, ſo that the umpirage ſhould be given by parol or in writing under the hand and ſeal of the ſaid *J. K.* before the —— day of, *&c.* *In conſideration whereof*, and in conſideration that the ſaid *C.* on the ſaid —— day of, *&c.* at, *&c.* aforeſaid, at the ſpecial inſtance and requeſt of the ſaid *A.* had undertaken and promiſed to the ſaid *A.* to pay to the ſaid *A.* 20 *l.* of lawful money of *England*, if he the ſaid *C.* ſhould not perform and fulfil the award of the ſaid arbitrators, or of the ſaid *J.* to be made of and upon the premiſſes in form aforeſaid, in all things on his part to be performed and fulfilled, the ſaid *A.* undertook, and on the ſaid —— day of, *&c.* at, *&c.* aforeſaid, faithfully promiſed the ſaid *C.* that if he the ſaid *A.* ſhould not perform the award or umpirage

umpirage aforeſaid, to be made in form aforeſaid of and upon the premiſſes, in all things on his part to be performed and fulfilled, then he the ſaid *A.* would pay 20*l.* of lawful money of *England* to the ſaid *C.* when he ſhould be thereunto afterwards requeſted. *And* the ſaid *C.* in fact ſaith, that the ſaid arbitrators omitted to make any award of and upon the premiſſes before the ſaid —— day of, *&c.* and that the ſaid *J.* in default thereof, having taken upon him the burthen of the ſaid arbitrament, before the ſaid —— day of, *&c.* *to wit*, on the —— day of, *&c.* at, *&c.* awarded, ordered and adjudged of and upon the ſaid premiſſes in form following, *to wit*, that the ſaid *A.* ſhould pay 10*l.* to the ſaid *C.* on the —— day of, *&c.* in full diſcharge of, *&c.* in or at the dwelling-houſe of one *L. M.* in *D.* aforeſaid. *And* the ſaid *C.* further in fact ſaith, that he the ſaid *C.* was ready on the ſaid —— day of, *&c.* at the dwelling-houſe of the ſaid *L. M.* to receive the ſaid 10*l.* according to the form and effect of the ſaid award; but the ſaid *A.* not regarding the ſaid award, did not pay the ſaid 10 *l.* to the ſaid *C.* on the ſaid —— day of, *&c.* or at any time afterwards; by reaſon whereof the ſaid *A.* ought to have paid the ſaid 20 *l.* to the ſaid *C.* according to his ſaid promiſe and undertaking: *Nevertheleſs* the ſaid *A.* no ways regarding his ſaid promiſe and undertaking, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud

defraud the said *C.* in this case, hath not paid the said 20 *l.* to the said *C.* (although the said *A.* afterwards, *to wit*, on the —— day of, *&c.* and often afterwards, at, *&c.* aforesaid, was requested to pay the same by the said *C.*) but he hath hitherto refused, and still doth refuse to pay him the same: Wherefore he says he is injured, and has damage to the value of 30 *l.* And thereof he bringeth suit, *&c.*

Declaration in case, for building so near the plaintiff's windows as to deprive him of the light.

Cornwal, to wit, *R. P.* late of, *&c.* was attached to answer *E. C.* of a plea of trespass on the case: And *whereupon* the said *E.* by *J. W.* his attorney complaineth, *that whereas* on the 1st day of *October* in the year of our Lord 1775, and always afterwards, he the said *E.* was and still is possessed of and in a certain antient messuage with the appurtenances, situate, lying and being at *P.* aforesaid in the county aforesaid, in which said messuage now are, and for the whole time aforesaid and before were certain windows on the west part thereof, through which said windows he the said *E.* (until the obstructions and damage hereafter mentioned) of right ought to have and enjoy the chearful light and wholesome air which by and thro' the said windows entered and were conveyed into the said messuage, and also the use of the said messuage, without any obstruction, hindrance or damage, to the great benefit and advantage of him the said *E.* *Yet* the said *R.* not ignorant of the premisses, but contriving and fraudulently and maliciously

ouſly intending in this behalf unlawfully to oppreſs him the ſaid *E.* and to ſpoil and deprive him of the uſe and benefit of his ſaid windows, and of his ſaid meſſuage, the ſaid *R.* afterwards, *to wit*, the ſaid 1ſt day of *October* in the ſaid year of our Lord 1735, and from that day to the 21ſt day of *May* in the year of our Lord 1777, at *P.* aforeſaid in the county aforeſaid, certain walls and other buildings lately erected and built ſo near to the ſaid meſſuage, unlawfully and injuriouſly, and to the nuſance of the ſaid meſſuage of the ſaid *E.* continued, that by reaſon thereof not only the ſaid windows of him the ſaid *E.* were greatly darkened, obſcured and obſtructed, but alſo the rain-waters deſcending from the ſaid buildings greatly damaged and ſpoiled the ſaid meſſuage of the ſaid *E.* by which he the ſaid *E.* during all the time aforeſaid loſt and was deprived of the uſe and benefit of the light and air which would have entered and been conveyed into his ſaid meſſuage by and through the windows aforeſaid, if the ſaid walls and buildings had not continued as aforeſaid, but alſo the benefit, uſe and advantage of his ſaid meſſuage, to the damage of him the ſaid *E.* of 200 *l.* And thereof he bringeth this ſuit, *&c.*

Declaration in case at the suit of an attorney, for digging a trench in a street, wherein

—— *to wit*, *R. M.* late of, *&c.* was attached by the writ of our lord the king of privilege iſſuing out of the court here, to anſwer *T. P.* gent. one of the attornies of the court of our lord the king of the bench, of

plaintiff fell and broke his leg.

of a plea of treſpaſs on the caſe: And where-upon the ſaid *T.* in his proper perſon complaineth, that *whereas* in the town of *N. upon T.* aforeſaid there is, and from the time to the contrary whereof the memory of man is not to the contrary, hath been a certain antient ſtreet called the *Side*, which ſaid ſtreet is, and by the whole time aforeſaid hath been the king's highway for all ſubjects of our lord the preſent king and his predeceſſors, kings and queens of *England*, to go, paſs over and ride, in, by and through the ſaid ſtreet, at their will and pleaſure; *Yet* the ſaid *R.* not ignorant of the premiſſes, on the ——— day of, &c. without any lawful warrant dug and made a trench in the ſaid ſtreet croſs great part of the ſaid ſtreet, and did not take care to fill and ſtop up the ſame with earth; whereby the ſaid *T.* being a ſubject of our ſaid lord the preſent king, afterwards, *to wit*, on the —— day of, &c. at the ſaid town of *Newcaſtle upon Tyne*, in the night-time of the ſame day, not knowing of the ſaid trench, riding upon his horſe in and thro' the ſaid ſtreet, fell with his horſe into the ſaid trench, and thereby the leg of the ſaid *T.* was broken, and the ſaid *T.* was greatly hurt and bruiſed; and alſo his ſaid horſe was greatly injured, to the damage of the ſaid *T.* of 500*l.* And thereof he bringeth ſuit, &c.

Declaration in caſe by an executor durante minoritate,

Middleſex, to wit, *B. T.* late of the *Middle Temple*, *London*, eſq; was attached to anſwer *T. S.* gent. executor of the teſtament and

and last will of *R. S.* esq; deceased, during the minority of *R. S.* son of the said *R. S.* esq; deceased, of a plea of trespass upon the case: And whereupon the said *T. S.* by *R. G.* his attorney complaineth, wherefore *whereas* the said *R. S.* in his life-time heretofore, that is to say, in the term of St. *Michael* in the 29th year of the reign of the lord *Charles* II. late king of *England*, &c. in the court of the said late king, before the king himself, (the said court being at *W.* in the county of *M.* aforesaid) by the consideration of the said court had recovered against one *R. H.* a certain debt of 100*l.* and also 30*s.* for his damages, which he had sustained by occasion of the detaining that debt whereof he was convicted, as by the record thereof now remaining in the court of our lord the king at *W.* aforesaid, in full force and vigour, no ways reversed, annulled, or in any manner satisfied, more fully appeareth. *And whereas also* the said debt and damages being no ways paid or satisfied, and the said *R. H.* being further indebted to the said *R. S.* in the sum of 108*l.* of lawful money of *England*, for the rent of a certain messuage with the appurtenances, situate in the parish of *St. Martin's in the Fields* in the said county of *M.* then held by the said *R. H.* of the said *R. S* for a certain term of years then unexpired, the said *R. S.* made his testament and last will in writing, and of his said testament constituted the said *T.* executor, and afterwards died; and the said *T.* in due form of law proved the said testament, and took upon him the burthen of the execution

for procuring R. H. *who was indebted to the plaintiff's testator, to confess a fraudulent judgment, whereby plaintiff was defeated of recovering the debt.*

By original in B. R.
Carth. 3. S.C.
Comb. 51.

Plaintiff's testator recovered a judgment against R. H. *for* 101l. 10s.

R. H. *also indebted to testator in* 108l. *for rent.*

Testator made his will, appointed plaintiff executor, and died.

Judgment for plaintiff on a Sci. Fa. *brought on the said judgment.*

cution thereof. *And whereas* after the death of the said *R. S.* that is to say, in the term of *Easter* in the 32d year of the reign of the said lord the late king, in the said court of the said late king, before the king himself here, that is to say, at *W.* aforesaid, it was considered by the same court, that he the said *T.* executor, should have his execution against the said *R. H.* for the debt and damages aforesaid, according to the force, form and effect of the said recovery, as by the record thereof remaining in the same court more fully appears. *And whereas also* at the said time of adjudging that execution, the said *R.* was possessed of and in divers goods and chattels to the value of 200*l.* then being in the said messuage, as of his own proper goods and chattels; *And* the said *T.* intended to sue out a writ of *Fi. Fa.* upon the said judgment to the sheriff of *Middlesex* aforesaid, to cause the said debt and damages to be made of the said goods and chattels, and also to prosecute at law the said *R. H.* for the said rent as aforesaid due and then being in arrear; the said *B.* well knowing the premisses, and maliciously contriving, and with the said *R. H.* conspiring to deprive the said *T.* of his said several debts, to obtain the said goods and chattels to the proper use of the said *B.* the said *B.* afterwards unduly and fraudulently caused and procured a certain judgment to be signed in the said court of the said late king, before the king himself, against the said *R. H.* for 160*l.* of debt, at the suit of one *M. W.* and

R. H. *possessed of divers goods and chattels.*

Plaintiff intended to sue out a Fi. Fa. *and also to sue for the rent.*

Defendant fraudulently caused a judgment to be signed against the said R. H. *at the suit of* M. W.

to be inrolled of record as of the term of the *Holy Trinity* in the 32d year aforesaid; *When* in truth and in fact the said *R. H.* was not indebted to the said *M.* in the said 160 *l.* or any part thereof: *And* the said *B.* by pretext of a certain writ of the said late king of execution upon the said judgment, prosecuted out of the said court, and directed to the sheriff of the county of *M.* aforesaid, on the 18th day of *June* in the year of our Lord 1680. the said goods and chattels of the said *R. H.* out of the said messuage to be amoved, and to the said *B.* to be delivered, then and there fraudulently caused and procured, and the said goods and chattels to places unknown to the said *T.* carried away, conveyed and converted to his own use: *And* the said *R. H.* to places to the said *T.* also unknown, has also escaped, and by any process of law from that time hitherto cannot be taken and arrested; *Whereby* the said *T.* hath wholly lost not only several sums of money expended by him in suing for the said debts, but also the said several debts, to the damage of the said *T.* of 500 *l.* *And* thereof he bringeth suit, &c.

When nothing due to him.

And the goods of R. H. *to be taken in execution and delivered to defendant.*

R. H. *absconds, and cannot be arrested.*

Whereby has lost his said debts, &c.

And the said *B.* by *B. K.* his attorney cometh and defendeth the force and injury when, &c. and saith, that the matter contained in the said writ and declaration are not sufficient in law for the said *T.* to have maintained his said action against the said *B.* To which said matter the said *B.* hath no need, nor is he bound by the law of the land to answer; And this he is ready to verify:

Demurrer.

Wherefore he prayeth judgment, if the said *T.* ought to maintain any action against the said *B.* in this case, *&c.*

Joinder.

And the said *T. S.* for that he hath above declared sufficient matter in law to maintain his said action against the said *B. T.* which he is ready to verify, which said matter the said *B.* doth not deny, nor in any manner answer thereto, but wholly refuseth to admit the verification thereof, prayeth judgment, and his damages by the occasion aforesaid, to be adjudged to him, *&c. But because* the court of our said lord the king now here is not yet advised of giving their judgment of and upon the premisses, day is thereupon given to the parties aforesaid, before our lord the king, from the day wheresoever, *&c.* to hear their judgment of and upon the premisses, for that the court of our said lord the king now here is not yet, *&c.*

Cur. advisar. &c.

Judgment given for the plaintiff, and affirmed in parliament.

Declaration in case Sur le Stat. de Scand. Mag.

Middlesex, to wit, *T. B.* late of, *&c.* was attached to answer the right honourable *E.* lord *G.* baron of ——, one of the peers and great men of this realm, who sueth as well for our lord the king as for himself, in a plea of trespass upon the case, *&c. And* thereupon the said lord *G.* who as well, *&c.* by *H. H.* his attorney complaineth, that *whereas* the said lord *G.* on the 29th day of *October* in the 19th year of the reign of our said lord the king, and long before, was, and ever since hath been, and yet is one of the barons

barons and peers of this realm, and for all the time aforesaid hath had and yet hath a seat and vote in the parliament of *Great Britain*, as one of the peers of this realm: Nevertheless the aforesaid *T.* contriving and maliciously designing, against the form of the statute in that case made and provided, to raise great scandal of and concerning the said lord *G.* whereby discords might arise between the said *G.* and other peers, and great men and other subjects of this realm, and to hurt, injure and impair the good name, credit, state, dignity and honour of the said lord *G.* on the said 29th day of *October* in the 19th year aforesaid, at *W.* in the said county of *M.* in a certain discourse which he the said *T.* then and there had of and concerning the said lord *G* in the presence and hearing of divers of his majesty's faithful subjects, falsely and maliciously spoke, related, published, and with a loud voice declared of and concerning the said lord *G.* these false, scandalous and defamatory words here next following, that is to say, *He* (meaning the said lord *G.*) *is a worthless fellow, and a little great lord, and his word* (meaning the word of the said lord *G.*) *is not worth two-pence: He* (meaning again the said lord *G.*) *has honour, but uses none. And* the said *T.* out of his further malice contriving and maliciously designing, against the form of the said statute, to raise a great scandal of and concerning the said lord *G.* whereby discords might arise between the said lord *G.* and other peers and great men, and other subjects of this

realm, and to hurt, injure and impair the good name, credit, ſtate, dignity and honour of the ſaid lord *G.* afterwards, that is to ſay, on the 23d day of *March* in the 19th year aforeſaid, at *W.* aforeſaid, in another diſcourſe which he the ſaid *T.* then and there had with one *T. C.* of and concerning the ſaid lord *G.* in the preſence and hearing of divers others of his majeſty's faithful ſubjects, falſely and maliciouſly ſpoke, related, publiſhed, and with a loud voice declared of and concerning the ſaid lord *G.* the falſe, ſcandalous and defamatory words here next following, that is to ſay, *He*, &c. *And* alſo the further falſe, ſcandalous and defamatory words here next following, *it is true*, &c. By reaſon of the ſpeaking, relating, publiſhing and declaring of which ſaid ſeveral falſe, ſcandalous and defamatory words, the ſaid *L. G.* is hurt in his reputation, honour and dignity; and the ſaid lord *G.* hath loſt the grace, good opinion and eſtimation of his preſent majeſty, and the peers of this realm; and divers rumours and ſcandals amongſt the peers of this realm, by the occaſion aforeſaid, are raiſed and divulged, and diſcords thereupon by the occaſion aforeſaid are riſen between the ſaid lord *G.* and the peers and great men, and other ſubjects of this realm, and daily more and more are likely to ariſe, to the great diſturbance of the public tranquility of this realm, in contempt of his preſent majeſty, and to the great ſcandal and detriment of the ſaid lord *G.* and againſt the form of the ſtatute, to the damage of the ſaid,

said lord *G.* who as well, &c. of 500*l.* And thereof the said lord *G.* as well for our said lord the king as for himself bringeth this suit, &c.

Declaration in case for slanderous words spoken of a tradesman, charging the defendant with theft; special damage laid.

Middlesex, to wit, *J. C.* late of, &c. was attached to answer to *F. D.* in a plea of trespass upon the case, &c. *And* whereupon the said *F.* by *S. N.* his attorney complaineth, *That whereas* he the said *F.* is a good, true, pious, faithful and honest subject of this kingdom, and as a good, true, pious, faithful and honest subject of this kingdom, from the time of his nativity hitherto hath demeaned and behaved himself, and until the time of the speaking of the false and scandalous words first hereafter mentioned to have been spoken by the said *J.* was accounted, esteemed and reputed a person of good name, fame, condition, conversation and reputation, and as a faithful and honest subject of this kingdom he the said *F. D.* always kept himself free and clear from theft, robbery, and all such enormous crimes; and by reason of his said good name, fame, condition, conversation and reputation, the said *F. D.* had obtained the love and good will of all his neighbours, and other faithful and honest subjects of this kingdom: *And whereas* he the said *F.* now useth and exerciseth, and for divers years now last past has used and exercised the trade of a carpenter, and thereby and by reason of his good name, credit and reputation therein, hath during the time aforesaid got and endeavoured to get his livelihood in support of himself and

 family:

family: *Nevertheless* the ſaid *J.* well knowing the premiſſes, but contriving and maliciouſly intending to deprive him the ſaid *F.* of his good name, fame, credit, eſteem and reputation aforeſaid, and to bring him into ſcandal, reproach and diſpleaſure, as well amongſt all grave and venerable perſons, as other faithful and honeſt ſubjects of this kingdom, and eſpecially amongſt his friends and cuſtomers, and to hinder him in the exerciſe of his ſaid trade, and alſo to cauſe the ſaid *F. D.* to be puniſhed according to the laws and ſtatutes of this kingdom made and provided againſt thoſe who commit felonies and robberies, on the 11th day of *January* in the year of our Lord 1774, at *Uxbridge* in the ſaid county, in a certain diſcourſe which the ſaid *J.* then and there had with divers ſubjects of this kingdom, of and concerning the ſaid *F.* did falſely and maliciouſly, in the preſence and hearing of thoſe ſubjects, ſpeak and utter of and concerning the ſaid *F* certain falſe, ſcandalous and defamatory words, *to wit*, *He* (meaning the ſaid *T. D.*) *has broke open my brother* T.'s *ſcrutore, and robbed him* (meaning *T. C.* brother of him the ſaid *J.*) *of 27 guineas and ſome half-pence.* ***And*** the ſaid *J.* of his further malice prepenſed againſt the ſaid *F.* afterwards, *to wit*, on the ſame day and year, at *U.* aforeſaid, in a certain other diſcourſe which the ſaid *J.* then and there had with divers other ſubjects of this kingdom, of and concerning the ſaid *F.* did falſely and maliciouſly, in the preſence and hearing of thoſe ſubjects, ſpeak and utter of and

and concerning the said *F. D.* certain other false, scandalous and defamatory words, *to wit*, *The rogue* (meaning the said *F.*) *has robbed my house*, (meaning the dwelling-house of the said *J.*) *and broke open my brother's scrutore, and has took some money from him*, (meaning the aforesaid *T. C.* the said *J.*'s brother) *and I* (meaning again the said *J.*) *will swear it:* Whereas in truth the said *F.* is not guilty of any offence by the said several scandalous words laid to his charge. By reason of which speaking of the said several false, scandalous and defamatory words, the said *F.* is greatly scandalized, hurt and injured in his good name, fame, credit, esteem and reputation aforesaid, and is greatly hurt and damnified in his said business, insomuch that divers persons, *to wit*, *G. W.* and *J. G.* who were used and accustomed to employ the said *F.* in his said trade and business of a carpenter, by reason of speaking the said words, suspect him to be guilty of the crimes thereby laid to his charge, and have refused, and still do more and more refuse to employ him in his said business, or to have any dealings or concerns whatsoever with him; and the said *F.* is very much prejudiced and hindered in the exercise of his said trade, to the damage of the said *F.* 500 *l.* And thereof he bringeth suit, &c.

Special damage laid.

Leicester, to wit, *W. S.* late of *W.* in the county aforesaid, yeoman, was attached by the writ of our lord the king of privilege, issuing out of the court here, to answer *T. B.* Gent one of the attornies of the court of our lord the king of the bench here, of a plea

Declaration in case for scandalous words spoken [illegible]

plea of trespass upon the case, *&c.*] And whereupon the said *T.* in his proper person complaineth, wherefore *whereas* the said *T.* is a good, true and faithful subject of our lord the present king, and of good name, fame and condition, and from the time of his birth hitherto has behaved, and demeaned himself as a good, true and faithful subject of our lord the present king, and for all that time has remained without any kind of falsity, perjury, or stain of any hurtful crime: And also whereas the said *T.* for divers years now last past, was and still is one of the attornies of the court of our lord the present king of the bench here, and has hitherto behaved and demeaned himself rightly and honestly according to his ability and skill in all causes of his clients, whose attorney the said *T.* has been in the said court here, and by reason of the faithful and honest exercise of his office of an attorney in the same court of the bench, and prosecuting the causes of his clients, justly and honestly, gained and acquired many fees and much profit for the support and maintenance of himself and his family, and was daily likely to gain more and more: *Nevertheless,* the said *W.* not ignorant of the premisses, but contriving and maliciously intending unjustly to injure the said *T.* and to hurt, take away and injure his good name, fame, credit, and esteem, and to bring the said *T.* into ignominy and infamy, as well amongst his neighbours as amongst all his clients, and to deprive the said *T.* of his gain and profit which he might after-

afterwards gain by reason of the honest exercise of his office of an attorney, on the 20th day of *February* in the 30th year of the reign of our said lord the present king, at the borough of *L.* having communication and discourse with divers subjects of our said lord the king concerning the said *T.* and the exercise of his said office of an attorney, openly and publickly said, spoke and published these false, opprobrious and malicious words following, *to wit, He* (meaning the said *T.*) *is a perjured knave and a rogue, and I.* (meaning himself the said *W.*) *will prove it.* By pretext of speaking and publishing of which said false, opprobrious and malicious words, the said *T.* is not only greatly hurt and injured in his good name, fame and reputation, amongst many honourable and venerable persons, and other subjects of our said lord the present king, whose attorney the said *T.* then and before was in the said court of the bench, but also the said *T.* lost divers sums of money which the said *T.* used to get and gain of his clients for the honest exercise of his said office of an attorney, and by that occasion divers of his clients and other persons with whom the said *T.* before that time used to converse, have intirely left the said *T.* Wherefore he saith that he is injured, and hath damage to the value of 100 *l.* And thereof he bringeth suit, *&c.*

Plea, as to part not guilty.

And the said *W.* by *F. S.* his attorney cometh and defendeth the force and injury when, *&c.* *And* as to the words *(And a rogue)*

rogue) above specified in the declaration of the said *T.* the said *W.* saith, that he is not guilty of speaking and publishing the same, as the said *T.* above complaineth against him; And of this he putteth himself upon the country: *And* the said *T.* doth so likewise, &c. *And* as to the speaking and publishing the residue of the words expressed in the same declaration, the said *W.* saith that the said *T.* ought not to have his said action thereupon against him, because he saith, that long before the time of speaking and publishing those words, the said *W.* in the court of our lord the present king of the bench at *W.* in the county of *M.* and before the then justices of our said lord the king of the same court, impleaded one *F. C.* by the name of *F. C.* late of *H.* in the county aforesaid, weaver, for that the said *F.* with force and arms had broke and entered the said close of the said *W.* at *H.* aforesaid, and had broke and spoiled the gates of the said *W.* there lately erected, to the value of 40*s.* and had broke and spoiled a pump of the said *W.* there also lately being, to the value of 60*s* and had taken and carried away the water of the said *W.* to the value of 10*s.* there lately found, and had done other injuries to him, to the great damage of the said *W.* and against the peace of our lord the present king, &c. *And* whereupon the said *W.* by *J. M.* his attorney complained, that the said *F.* on the 20th day of *December* in the 21st year of the reign of our lord the present king, with force and arms, &c. had broke and entered

Issue.

As to the residue, justifies.

A suit brought by defendant.

The declaration.

the close of the said *W.* called *Home-yard* at *H.* [the whole declaration recited.] And thereof he brought suit, *&c.* To which said the said *F.* by *J. C.* his attorney appeared in the same court of our said lord the king of the bench, before the justices of our said lord the king of the same court, and in the same court afterwards, *to wit*, in the term of the *Holy Trinity* next ensuing, by his said attorney came and defended the force and injury when, *&c.* *And as to* the whole trespass aforesaid, except the breaking the close, and taking and carrying away the said water, said that he was in nothing guilty thereof, as the said *W.* above complained against him; And of that he put himself upon the country: *And* the said *W.* did so likewise, *&c.* *And as to* the said breaking the close, and taking and carrying away the said water, above supposed to be done, the said *F.* said that the said *W.* ought not to have his said action thereupon against him, *&c.* because he said, that before the said time in which the said trespass was above supposed to be done, *to wit*, on the [illegible] day of *December* in the 21st year aforesaid, and from that time until the said time, and at the said time in which, *&c.* there was a great drought and want of water in the town of *H.* aforesaid, and the said *W.* at the said time in which, *&c.* being a parishioner of the said town, and a neighbour to the said *F.* and being willing to supply the said *W.* in his wants with water from the said pump of the said *W.* gave the said *F.* licence

Plea.

First issue.

cence to enter into the ſaid cloſe called *Home-yard*, and from the ſaid pump to take and carry away the ſaid water to his own uſe; by virtue of which licence the ſaid F. the ſaid time in which, &c. entered into the ſaid cloſe of the ſaid W. called *Home-yard*, and from the ſaid pump took and carried away the ſaid water, as it was lawful for him to do; which was the ſaid treſpaſs, as to the breaking the ſaid cloſe, and taking and carrying away the ſaid water, whereof the ſaid *W.* then above complained againſt him; And this he was ready to verify: Wherefore he prayed judgment if the ſaid *W.* ought to have his ſaid action thereupon againſt him, &c. *And* the ſaid *W.* as to the ſaid plea of the ſaid *F.* as to breaking the ſaid cloſe, and taking and carrying away the ſaid water above pleaded in bar, ſaid that he ought not by any thing therein alledged to be barred from having his ſaid action againſt the ſaid *F.* becauſe he ſaid that he the ſaid *W.* did not give to the ſaid *F.* licence to enter into the ſaid cloſe, and to take and carry away the ſaid water from the ſaid pump to his own proper uſe, as the ſaid *F.* hath above in pleading alledged; And he prayed that this might be inquired of by the country: *And* the ſaid *F.* did ſo likewiſe, &c. *Therefore*, as well to try the ſaid iſſue as the ſaid other iſſue joined between the ſaid parties, the ſheriff was commanded to cauſe to come before the ſaid juſtices of our lord the king of the bench aforeſaid, from the day of the *Holy Trinity* in three weeks, twelve, &c.

Second iſſue. Venire. *awarded.*

&c. By whom, *&c.* And who neither, *&c.* To take cognizance, *&c.* Because as well, *&c.* *At which day* the jury between the said parties in the plea aforesaid was thereupon respited between them until from the day of St. Michael in three weeks then next ensuing, unless the justices of our lord the present king assigned to take the assizes in the county aforesaid by form of the statute, *&c.* should first come on *Thursday* the 14th day of *July* then next ensuing, at the castle of *L* in the county aforesaid, for default of the jurors, because none of them came. *At which* said *Thursday* the 14th of *July* in the 22d year aforesaid, at the castle of *L.* aforesaid, before Sir *T. T.* knt. and Sir *H. W.* knt. justices of our lord the king of the bench, and justices of our said lord the king assigned to take the assizes in the county of *L.* aforesaid, by the form of the statute, *&c.* came as well the said *W.* as the said *F.* by their attornies aforesaid; And the jurors of that jury, *to wit*, [*naming them*] being demanded, also came, and to speak the truth of the premisses were chosen, tried and sworn. *Upon which* the said *T. B.* being then and there produced as a witness on the behalf of the said *F.* for decrease of the damages of the said *W. S.* in the said second issue, and then and there before the justices and jury aforesaid, being charged and sworn upon the Holy Evangelists of God to give to the said jury true evidence concerning the said issue between the said parties, the said *T.* then and there upon his oath voluntarily, falsely and

Nisi prius.

Trial.

Plaintiff, produced as a witness, gave false evidence.

and corruptly, to the said jury gave in evidence, deposed and swore, that all the town-wells in *H.* aforesaid, at the time the said trespass was done, were dried up; when in truth, at the time the said trespass was done, there were in *H.* aforesaid four town-wells, *to wit*, the conduit, the swe[illegible]ll, *Ward*'s pump and *Worth*'s pump, which then run with water, and were not dried up; whereby the said *T. B.* then and there committed voluntary perjury; and by reason thereof the said *W. S.* afterwards, *to wit*, on the 20th day of *February* in the 30th year of the reign of our lord the present king, at the borough of *L.* aforesaid, spoke and published of the said *T. B.* the said residue of the words in the declaration of the said *T.* specified, to wit, *He is a perjured knave, and I will prove it*, as he lawfully might; And this he is ready to verify: Wherefore he prayeth judgment, if the said *T.* ought to have his said action thereupon against him, &c.

Declaration in case for a malicious prosecution in indicting plaintiff's wife.

Middlesex, to wit, *W. M.* late of, &c. and *B.* his wife, were attached to answer to *J. S.* of a plea of trespass upon the case, &c. *And* whereupon the said *J.* by *J. J.* his attorney complaineth, *that* the said *B.* contriving, and maliciously and wickedly intending unjustly to grieve, oppress, weary and impoverish him the said *J.* and put him to great expence, without any reasonable cause, and of her mere malice conceived against the said *J.* and *M.* his wife, at his present majesty's general sessions of the peace held at

Hicks's

Hicks's Hall in *St. John's Street*, in and for the county of *Middlesex*, upon *Monday* the 28th day of *August* in the sixth year of his present majesty's reign, before *E. B.* esq; *T. R.* bart. *J. G.* knt. *J. C.* esq; and others their companions, his said majesty's justices assigned to keep the peace in the said county of *M.* and also to hear and determine divers felonies, trespasses and misdemeanors committed in the said county, falsely and maliciously caused and procured *M.* the wife of the said *J.* to be indicted by the name of *M.* the wife of *J. S.* late of the parish of *St. Paul Covent-Garden*, for that she the said *M.* [*as in the indictment*] crown and dignity: And the said indictment was so falsely and maliciously prosecuted, and caused to be prosecuted against the said *M.* by her the said *B.* and at her instigation until afterwards, *to wit*, at his said majesty's general sessions of the peace held at *H. H.* aforesaid, in and for the said county of *M.* upon *Monday* the [illegible]th day of *December* in the said 6th year of his present majesty's reign, before *E. B. J. M. T. A.* esqs; and others their companions, then his said majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, she the said *M.* was duly acquitted of the premisses in the said indictment above imputed to her, by a jury of the county, and the judgment of the said court: By reason whereof he the said *J.* the same day and year last mentioned, and many times

times as well before as afterwards, at *W.* in the said county of *M* was forced to lay out divers sums of money in the defence of the said *M.* his wife in this behalf, and to undergo great trouble and labour about the same, to the damage of the said *J.* of 9 *l.* 19 *s.* And thereof he bringeth his suit, *&c.*

Averment of the identity of the parties.

And the said *J.* averreth, that the said *W. M.* named in the said declaration, and *W. M.* named in the said indictment, is one and the same person, and not any other or different person, and that the said *B* named in the said declaration, and the said *B.* named in the said indictment, is one and the same person, and not any other or different person

Declaration in case Sur trover by assignees of the effects of a bankrupt, upon their own possession.

Wilts, to wit, *E. D.* late of, *&c.* and *R. M.* late of, *&c* were attached to answer to *J. G.* and *R. P.* assignees of the debts, goods and chattels of *S. L.* a bankrupt, according to the form of the statutes made concerning bankrupts, of a plea of trespass upon the case; *And* whereupon the said *J* and *R.* by *S. S.* their attorney complain, *That* they the said *J.* and *R* on the —— day of —— in the year of our Lord —— at *B.* in the said county of *W.* were possessed of thirty broad cloths, of the value of 600 *l.* as of their own proper goods and chattels (they being as aforesaid assignees of the debts, goods and chattels of the said bankrupt); *And* being thereof so possessed, they the said *J* and *R.* the said thirty broad cloths, out of their hands and possession casually lost, and mislaid; which said thirty broad cloths, afterwards, *to wit*, the day and year aforesaid,

at *B.* aforefaid, came to the hands and pof-feffion of them the aforefaid *E.* and *R.* by finding; *And* though the aforefaid *E.* and *R.* knew the aforefaid cloths to be the proper goods and chattels of the aforefaid *J.* and *R.* and to them as affignees of the debts, goods and chattels of the aforefaid *S. L.* the bankrupt, of right to belong and appertain: *Yet* they the aforefaid *E.* and *R.* contriving and fraudulently intending the aforefaid *J.* and *R.* of the aforefaid cloths to deceive and defraud, have not delivered the aforefaid cloths or any of them to the aforefaid *J.* and *R.* although they have by them been often requefted to deliver the fame: But they the aforefaid *E.* and *R.* afterwards, *to wit*, the day and year aforefaid, at *B.* aforefaid, to their own proper ufe did convert and difpofe of the aforefaid cloths, to the damage of them the aforefaid *J.* and *R.* 600*l.* And thereof they bring fuit, *&c.*

Declaration in cafe Sur trover for money.

Somerfetfhire, to wit, *E. A.* late of, *&c.* was attached to anfwer to *M. B.* widow, in a plea of trefpafs upon the cafe: *And* whereupon the faid *M.* by *W. H.* her attorney complaineth, *That* whereas the faid *M.* on the 29th day of *February* in the year of our Lord 1736 at *M.* aforefaid was poffeffed of the monies following, *to wit*, fix pieces of gold coin of this kingdom, commonly called *Jacobus's*, and twelve other pieces of another gold coin of this kingdom, commonly called *Carolus's*, of the value of 20*l.* and of other 20*l* in monies, numbered as of her own proper monies; and being fo poffeffed there-

of, the said *M.* afterwards, *to wit*, on the same day and year, at *M.* aforesaid, casually lost the said monies out of her hands and possession; which said monies afterwards, *to wit*, at the same time and place, came to the hands and possession of the said *E.* by finding them: *Yet* the said *E.* knowing the said monies to be the proper monies of the said *M.* and to her of right to belong and appertain, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *M.* of the monies aforesaid, hath not yet delivered her the said monies, though often requested so to do: But the said *E.* afterwards, *to wit*, at the same time and place, converted and disposed of the same to her own use; Whereby the said *M.* saith she is prejudiced and damaged to the value of 50*l.* And thereof she bringeth suit, &c.

Declaration in case sur trover against husband and wife, for trover by the [illegible] *the.*

London, to wit, *A. B.* late of, &c. and *E.* his wife, were attached to answer *C. D.* in a plea of trespass on the case, &c. *And* whereupon the said *C.* by *W. R.* his attorney complaineth, *That whereas* the said *C.* on the —— day of —— in the year of our Lord 1729. at *L.* aforesaid, in the parish of *St. Bride's* otherwise *Bridget*, in the ward of *Farringdon without*, was possessed of the goods and chattels following, namely, of one gold watch, &c. to the value of 200*l.* as of his own goods and chattels; and being so possessed thereof, the said *C.* afterwards, *to wit*, the same day and year last above mentioned, at *L.* aforesaid, in the parish and ward

ward aforesaid, casually was deprived of and lost those goods and chattels out of his hands and possession; which said goods and chattels afterwards, *to wit*, the same day and year last above mentioned, at *L.* aforesaid, in the parish and ward aforesaid, by finding came to the hands and possession of the said *E.* whilst she was single and unmarried: *Yet* the said *E.* whilst she was single and unmarried, and the said *A.* and *E.* after the celebration of the marriage between them, knowing those goods and chattels to be the proper goods and chattels of him the said *C.* and of right to belong and appertain to him the said *C. Nevertheless*, contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *C.* in this particular, hath not nor have (though often requested so to do) delivered those goods and chattels to the said *C.* but hath and have converted and disposed of those goods and chattels afterwards, *to wit*, the same day and year last above mentioned, at *L.* aforesaid, in the parish and ward aforesaid, to the proper use and advantage of her the said *E.* while she was single and unmarried, and to the proper use and advantage of them the said *A.* and *E.* after the celebration of their said marriage, namely, the ——— day of ——— in the year of our Lord 1775, at *L.* aforesaid, to the damage of the said *C.* 200 *l.* And thereof he bringeth suit, &c.

Declaration in case for throwing down a dam, and di-

Yorkshire, to wit, *J. H.* late of the parish of *N.* in the county aforesaid, Esq; was attached to answer *W. P.* Esq; of a plea of trespass

verting a water course. Carth. 84. S. C. 3 Lev. 133. Skin. 65, 175. Comb. 9. 1 Show. 64. 2 Show. 243, 249. 3 Mod. 48.

trespass upon the case. *And* whereupon the said *W.* by *T. L.* his attorney complaineth, that the said *J.* on the 14th day of *May* in the 32d year of the reign of our lord the present king, unjustly and maliciously broke, threw down and prostrated great part of a certain ancient dam in and upon the river *D.* in the parish aforesaid, and thereby for a great time, *to wit*, from the said 14th day of *May* in the thirty-second year aforesaid, until the feast of *St. Michael* the archangel then next ensuing diverted and hindred great part of the water of the said river from its antient and usual course to and towards a water corn-mill of the said *W.* situate upon the said river in the parish of *O. M.* whereby the said *W.* lost the benefit and profit of his said mill for the whole time aforesaid. Wherefore the said *W.* saith, that he is injured, and hath damage to the value of 100*l.* And thereof he bringeth suit, *&c.*

Plea, the dam was on defendant's freehold.

And the said *J.* by ——— his attorney cometh and defendeth the force and injury, *&c.* and saith, that the said *W.* ought not to have his said action thereupon against him, because he saith, that before the time of breaking, throwing down, and prostrating the said dam, *to wit*, on the first day of *May* in the 31st year of the reign of our lord the present king, he the said *J.* was seised in his demesne as of fee, of and in an antient water corn-mill in *N.* aforesaid, and also of and in six acres of land next adjoining on the part of the said mill, in which six acres of land the said dam in the said de-

claration of the ſaid *W*. mentioned, from the time to the contrary whereof the memory of man is not, had been made for conveying and directing a water-courſe from the ſaid river *D*. to the ſaid antient mill, and for the whole time aforeſaid was repaired and maintained by the ſaid *J*. and other tenants for the time being of the ſaid antient mill without the contribution of any other perſon whatſoever, or for any other uſe than for conveying a water-courſe from the ſaid river for wheeling about by the fall of the ſaid water, and turning the wheels of his ſaid antient mill. And the ſaid *J*. further ſaith, That the ſaid antient mill on the ſaid firſt day of *May* in the 31ſt year aforeſaid was by accident intirely burnt and deſtroyed by fire. And becauſe the ſaid *J*. did not intend to rebuild the ſaid antient mill, the ſaid *J*. afterwards, *to wit*, on the ſaid 14th day of *May* in the 32d year aforeſaid, broke, threw down and proſtrated great part of the ſaid dam, being built in and upon the ſaid ſix acres of land, the freehold of the ſaid *J*, and diſpoſed and converted the ſtones and lime coming therefrom to his own proper uſe, as it was lawful for him to do. Which is the ſame, &c. And this, &c.

Declaration in caſe of ſelling an unſound horſe, warranting him to be ſound.

London, to wit, *O. J.* late of, &c. was attached to anſwer unto *J. S.* of a plea of treſpaſs on the caſe, &c. And thereupon the ſaid *J.* by *G. H.* his attorney complaineth, That *whereas* the ſaid *J.* on the 16th day of *July* in the year of our Lord 1735. at *London*, to wit, in the pariſh of St. *Mary*

le Bow in the ward of *Cheap* bargained with the said *O.* to buy of the said *O.* a certain gelding of the said *O.*'s, and the said *O.* then and there well knowing the said gelding to be unsound, and labouring under and afflicted with a certain distemper called the *Glanders*, by warranting the said gelding to be sound in all respects, then and there falsely and fraudulently bargained and sold the said gelding, as and for a gelding sound in all respects, to the said *J.* for a large sum of money, *to wit*, for 5*l.* 5*s.* which said gelding was then and there unsound, and afflicted with and labouring under the same distemper called the *Glanders*, and so always afterwards there remained: And thus the said *O.* on the said 16th day of *July* in the year aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, falsely and fraudulently deceived the said *J.* to the said *J.*'s damage of 20 *l.* And thereof he bringeth suit, *&c.*

Hilary *term in the thirteenth year of the reign of king* George *the third.*

Declaration for words.

Kent, *to wit*, W. *M.* late of *C.* in the said county was attached to answer to *F. R.* in a plea of trespass on the case, *&c.* and whereupon the said *F.* by his attorney complains, That *whereas* he the said *F.* is a good, true, pious, faithful and honest subject of this kingdom, and as a good, true, pious,

pious, faithful and honeſt ſubject of this kingdom hath hitherto demeaned and behaved himſelf, and as a good, true, pious, faithful and honeſt ſubject of this kingdom from the time of his nativity until the ſpeaking, uttering and publiſhing of the ſcandalous, falſe, malicious and defamatory words firſt herein after mentioned to be ſpoken of the ſaid *F.* was reputed and eſteemed among all faithful and honeſt ſubjects of this kingdom with whom he dealt and converſed, and to whom he was known, and never was guilty of theft, robbery, fraud, or any ſuch hurtful and odious crimes, nor until the ſpeaking, uttering and publiſhing of the falſe, ſcandalous, malicious and defamatory words herein after firſt mentioned of the ſaid *F.* was ever ſuſpected to be guilty of thoſe crimes or any of them: And the ſaid *F.* by reaſon of his good name, fame and reputation aforeſaid, had obtained the love and good-will of all his neighbours and other faithful and honeſt ſubjects of this kingdom with whom he converſed and had dealings: *Nevertheleſs* he the ſaid *W.* well knowing the premiſſes, but contriving and maliciouſly and wickedly intending to injure, defame and ſlander the ſaid *F.* and to deprive him of his good name, fame, credit and reputation aforeſaid, and bring him into ſcandal, contempt and reproach, as well among all his neighbours, and friends, as other faithful and honeſt ſubjects of this kingdom, and to cauſe him to be puniſhed according to the laws of this kingdom, made and provided

against theft, robbery, felony and fraud, on the eighteenth day of *March* in the year of our Lord one thousand seven hundred and thirty-eight at *Chatham* aforesaid, in a certain discourse which the said *W.* then and there had with divers subjects of this kingdom of and concerning the said *F.* did falsely, wickedly and maliciously speak, utter and publish of and concerning the said *F.* in the presence and hearing of those subjects, certain false, scandalous, malicious and defamatory words, *to wit, He* (meaning the said *F.*) *is an old rogue, and has robbed me* (meaning him the said *W.*); *And* the said *W.* of his further malice prepensed against the said *F.* afterwards, *to wit,* on the same day and year at *Chatham* aforesaid, in a certain other discourse which the said *W.* then and there had with divers other subjects of this kingdom of and concerning the said *F.* did falsely, wickedly and maliciously, and without any reasonable or probable cause whatsoever, publish and declare in the presence and hearing of those subjects, *that the said* F. *had robbed him*; by reason of the speaking, uttering and publishing which said several false, scandalous, malicious and defamatory words so spoken, uttered and published by the said *W.* of the said *F.* as aforesaid, and of the publishing of the said slander, he the said *F.* is greatly hurt, injured, prejudiced and damnified in his good name, fame, credit and reputation: *And whereas* he the said *F.* now is, and for divers years now last past has been a servant of our sovereign lord the king,

king, and foreman of the king's yard at *Chatham* aforesaid, and has behaved himself well and honestly in his said office: Nevertheless the said *W.* well knowing the premisses, but contriving and maliciously intending to defame and injure the said *F.* and to deprive him of his said office, whilst he the said *F.* was in his said office of foreman of the king's yard at *Chatham* aforesaid, *to wit*, on the day and year aforesaid at *Chatham* aforesaid, in a certain discourse which the said *W.* then and there had with divers subjects of this kingdom of and concerning the said *F.* did falsely, wickedly and maliciously speak, utter and publish of and concerning the said *F.* and his behaviour in the execution of his said office, in the presence and hearing of those subjects, certain false, scandalous, malicious and defamatory words, *to wit*, *That his master* R. (meaning and pointing at the said *F.*) *that old villain and rascal, who is a good for-nothing old rascal, and not fit to be employed in the king's service: And* the said *W.* of his further malice prepensed against the said *F.* afterwards, *to wit*, on the same day and year at *Chatham* aforesaid, in a certain other discourse which the said *W.* then and there had with divers other subjects of this kingdom of and concerning the said *F.* and his behaviour in the execution of his said office, did falsely, wickedly and maliciously speak, utter and publish of and concerning the said *F.* and his behaviour in the execution of his said office, in the presence and hearing of those subjects, certain other

other false, scandalous, malicious and defamatory words, *to wit*, *He* (meaning the said *F.*) *is a good-for-nothing old rascal, and not fit to be employed in the king's service*: *And* the said *W.* of his further malice prepensed against the said *F.* afterwards, *to wit*, on the same day and year at *Chatham* aforesaid in a certain other discourse, which the said *W.* then and there had with divers other subjects of this kingdom, of and concerning the said *F.* and his behaviour in the execution of his said office, did falsely, wickedly and maliciously, and without any reasonable or probable cause whatsoever, publish and declare in the presence and hearing of those subjects, *that the said* F. *cheated and defrauded his majesty in the execution of his said office*; whereas the said *F.* is not thereof guilty; by reason of the speaking, uttering and publishing of which said several false, scandalous, malicious and defamatory words, 3dly and 4thly above-mentioned, so spoken, uttered and published by the said *W.* of the said *F.* and of the publishing the said slander lastly above mentioned, he the said *F.* is greatly hurt, prejudiced and injured in his good name, fame and reputation, to the damage of the said *F.* of two hundred pounds: And thereupon he brings suit, *&c.*

Not guilty.

And the said *W.* by *T. H.* his attorney comes and defends the wrong and injury, when, *&c.* and saith that he is not guilty of the premisses as the said *F.* above in his declaration hath alledged against him: And of this he puts himself upon the country; and the

the said *F.* does so likewise: *Therefore* the sheriff is commanded that he cause to come here, on the octave of the purification of the blessed *Mary*, twelve good, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Venire award.

Hilary *term in the fourteenth year of king* George *the third.*

To the justices of our lord the king of the bench.

London, to wit, *R. B.* gent. one of the attornies of the court of our lord the king, before the king himself, by *J. S.* his attorney, complains of *B. S.* gent. one of the attornies of the court of the said lord the king of the bench here, present here in court in his own proper person, in a plea of trespass on the case; For that *whereas* as well by the king's royal dignity, as by antient custom, from time whereof the memory of man is not to the contrary, all and singular the attornies of the said court of the said lord the king before the king himself attending the same court, and prosecuting and defending suits therein for their clients, have not nor ought to be sued or impleaded elsewhere than in the said court of the said lord the king before the king himself (pleas of freehold only excepted): *And whereas* he the said *R.* now is, and for divers years now last

Bill against an attorney of the C. B. *at the suit of an attorney of the* K. B. *for causing plaintiff to be arrested contrary to this privilege,* &c. *on a* Ca. ad respondendum *at the defendant's suit.*

last past hath been, one of the attornies of the said court of the said lord the king before the king himself attending the said court, and prosecuting and defending suits therein for his clients: *Nevertheless* the said *B.* well knowing the premisses, but contriving and maliciously intending to injure and oppress the said *R.* contrary to the said custom and his said privilege, whilst he the said *R.* was one of the attornies of the said court of the said lord the king before the king himself as aforesaid, and whilst he the said *B.* was one of the attornies of the said court of the said lord the king of the bench here, *to wit*, on the fourth day of *August* in the fourteenth year of the reign of the said lord the king, did wrongfully and maliciously cause and procure the said *R.* to be arrested and held to special bail in *London* aforesaid by the then sheriffs of *London* aforesaid, by virtue of a writ of the said lord the king of *capias ad respondendum*, issuing out of the court of our said lord the king of the bench here, at the suit of the said *B.* and directed to the then sheriffs of *London* aforesaid, for the arresting of the said *R.* in a certain plea of trespass, and also in a certain plea of trespass upon the case upon promise, to the damage of the said *B.* of 30*l.* By reason whereof the said *R.* was imprisoned by the said sheriffs of *London* for a long time, *to wit*, for the space of twelve hours, for want of bail for his appearance to answer to the said *B.* in his pleas aforesaid, and was put unto and sustained great expences in and about procuring

ing his discharge from his said imprisonment, to the damage of the said *R.* of forty pounds: And thereupon he prays relief, *&c.*

Pledges, *&c.*

On reference to Mr. *C.* by consent of both sides he awarded, that the defendant should pay plaintiff 10*l.* 10*s.* and proceedings to stay.

Michaelmas *term in the thirteenth year of king* George *the third.*

Declaration for keeping a dog that worried the plaintiff's sheep.

Sussex, *to wit,* J. *W.* late of —— in the said county —— was attached to answer to *H. B.* esq; in a plea of trespass on the case, *&c.* And whereupon the said *H.* by his attorney complains, *That whereas* the said *J.* on the twenty-fifth day of *March* in the year of our Lord 1739, at —— aforesaid, did keep a dog, well knowing that the said dog was used and accustomed to bite and worry sheep; which dog so kept by the said *J.* as aforesaid, on the same day and year, at *Wivelsfield* aforesaid, did bite and worry divers sheep and lambs, *to wit,* thirty sheep and thirty lambs of the said *H.* so that part of those sheep and lambs of the said *H. to wit,* four sheep and two lambs of the price of six pounds died thereof, and the residue of those sheep and lambs were very much injured, damaged and lessened in value: *And whereas*

as the ſaid *J.* on the ſaid twenty-fifth day of *March* in the year aforeſaid, at *Wivelsfield*, did keep a bitch, well knowing that the ſaid bitch was uſed and accuſtomed to bite and worry ſheep; which ſaid bitch ſo kept by the ſaid *J.* as aforeſaid, on the ſame day and year, at *Wivelsfield* aforeſaid, did bite and worry divers other ſheep and lambs, *to wit*, thirty other ſheep, and thirty other lambs of the ſaid *H.* ſo that part of thoſe ſheep and lambs of the ſaid *H. to wit*, four ſheep and two lambs of the price of ſix pounds died thereof, and the reſidue of thoſe ſheep and lambs were very much leſſened in value, to the damage of the ſaid *H.* of 20 *l.* And thereupon he brings ſuit, *&c.*

Hilary *term in the eleventh year of king* George *the third.*

Declaration in caſe upon a ſpecial promiſe to ſell wines delivered to him by the plaintiff, or to return the ſame, or be accountable.

Suſſex, *to wit*, *J. R.* late of in the ſaid county, yeoman, was attached to anſwer *H. B.* the younger, in a plea of treſpaſs on the caſe, *&c.* and whereupon the ſaid *H.* by his attorney complains, *That whereas* the ſaid *J.* on the firſt day of *October* in the year of our Lord one thouſand ſeven hundred and ſeventy, at *Chicheſter* in the ſaid county, in conſideration that the ſaid *H.* at the ſpecial inſtance and requeſt of the ſaid *J.* would deliver to the ſaid *J.* a hogſhead of wine of the ſaid

said *H.* to be carried by the said *J.* from *Chichester* aforesaid to *Horsham* in the said county for hire and reward, to be therefore paid by the said *H.* to the said *J.* assumed upon himself, and then and there faithfully promised the said *H.* that he the said *J.* would sell and dispose of the said hogshead of wine at *Horsham* aforesaid for the benefit and profit of the said *H.* or would bring the same back to the said *H.* at *Chichester* aforesaid *gratis*, or else would be accountable for it to the said *H.* *And whereas* the said *J.* afterwards, *to wit*, on the day and year aforesaid at *Chichester* aforesaid, in consideration that the said *H.* at the like special instance and request of the said *J.* would deliver to the said *J.* another hogshead of wine of the said *H.* to be carried by the said *J.* from *Chichester* aforesaid to *Horsham* aforesaid for hire and reward, to be therefore paid by the said *H.* to the said *J.* assumed upon himself, and then and there faithfully promised the said *H.* that he the said *J.* would sell and dispose of the said hogshead of wine for the benefit and profit of the said *H.* or would bring back the same to the said *H.* at *Chichester* aforesaid *gratis*, or else would be accountable for it to the said *H.* and although the said *H.* giving credit to the said promises and assumptions so made by the said *J.* in form aforesaid, afterwards, *to wit*, the same day and year at *Chichester* aforesaid, delivered to the said *J.* the said two hogsheads of wine of the said *H.* for the purpose aforesaid; and although the said *J.* afterwards, *to*

 wit,

wit, the ſame day and year, carried the ſaid two hogſheads of wine ſo delivered to him as aforeſaid, from *Chicheſter* aforeſaid, to *Horſham* aforeſaid: *Nevertheleſs* the ſaid *J.* not regarding his ſaid ſeveral promiſes and aſſumptions made in form aforeſaid, but contriving and fraudulently intending craftily and ſubtilly to deceive and defraud the ſaid *H.* in this reſpect, did not ſell or diſpoſe of the ſaid two hogſheads of wine, or either of them, for the benefit and profit of the ſaid *H.* at *Horſham* aforeſaid, or elſewhere; neither did the ſaid *J.* bring back the ſaid two hogſheads of wine, or either of them, to the ſaid *H.* at *Chicheſter* aforeſaid, or elſewhere; neither has the ſaid *J.* in any manner accounted with the ſaid *H.* for the ſame, or any part thereof, (although he the ſaid *J.* afterwards, *to wit*, on the firſt day of *November* in the ſaid year of our Lord one thouſand ſeven hundred and ſeventy, at *Chicheſter* aforeſaid, was requeſted by the ſaid *H.* to perform his ſaid ſeveral promiſes and aſſumptions,) but the ſaid *J.* has hitherto wholly refuſed, and ſtill doth refuſe either to ſell and diſpoſe of the ſaid hogſheads of wine, or either of them, for the profit and benefit of the ſaid *H.* or to bring back the ſame to the ſaid *H.* or in any manner to account with the ſaid *H.* for the ſame: *And whereas* the ſaid *J.* afterwards, *to wit*, on the ſaid firſt day of *October* in the ſaid year of our Lord one thouſand ſeven hundred and ſeventy at *Chicheſter* aforeſaid, in conſideration that the ſaid *H.* at the ſpecial inſtance and requeſt of

Breach.

Special promiſe to ſell wine and render account thereof.

of the said *J.* would deliver to the said *J.* another hogshead of wine of the said *H.* to be carried by him from thence to *Horsham* aforesaid for hire and reward, and there to be sold and merchandized by him the said *J.* for the benefit and profit of the said *H.* to be accounted for by the said *J.* when he should be thereunto afterwards requested, assumed upon himself, and then and there faithfully promised the said *H.* that he the said *J.* would sell the said last mentioned hogshead of wine at *Horsham* aforesaid for the benefit and profit of the said *H.* and would render an account thereof to the said *H.* when he should be thereunto afterwards requested: *And whereas* the said *J.* afterwards, *to wit*, the same day and year at *Chichester* aforesaid, in consideration that the said *H.* at the special instance and request of the said *J.* would deliver to the said *J.* another hogshead of wine of the said *H.* to be carried by him the said *J.* from thence to *Horsham* aforesaid for hire and reward, and to be sold and merchandized by him the said *J.* for the benefit and profit of the said *H.* to be accounted for by the said *J.* when he should be thereunto afterwards requested, assumed upon himself, and then and there faithfully promised the said *H.* that he the said *J.* would sell the said last mentioned hogshead of wine for the benefit and profit of the said *H.* and would render an account thereof to the said *H.* when he should be thereunto afterwards requested; and altho' the said *H.* giving credit to the two last

 mentioned

mentioned promises and assumptions of the said *J.* so made in form aforesaid, afterwards, *to wit*, on the said first day of *October* in the year aforesaid at *Chichester* aforesaid, delivered to the said *J.* the said two last mentioned hogsheads of wine for the purpose aforesaid: *Nevertheless* the said *J.* not regarding his said two last mentioned promises and assumptions made in form aforesaid, but contriving and fraudulently intending craftilly and subtilly to deceive and defraud the said *H.* in this respect, did not sell and merchandize the said two last mentioned hogsheads of wine, or either of them, for the benefit and profit of the said *H.* and account with the said *H.* for the same, or any part thereof, (altho' the said *J.* afterwards, *to wit*, the said first day of *November* in the year of our Lord one thousand seven hundred and seventy aforesaid, at *Chichester* aforesaid, was requested by the said *H.* so to do,) but has hitherto wholly refused, and still refuses to sell and merchandize the same for the benefit and profit of the said *H.* and to account with the said *H.* for the same, to the damage of the said *H.* of twenty pounds: And thereupon he brings suit, *&c.*

Breach.

And the said *J.* by his attorney cometh and defendeth the force and injury when, *&c.* and saith, he did not assume upon himself in manner and form as the said *H.* hath above complained against him; and of this he puts himself upon the country; and the said *H.* likewise: *Therefore* the sheriff is commanded, that he cause to

Plea, Nonassumpsit.

Issue: Venire awarded.

·to come there twelve, &c. By whom, &c. And who are neither, &c. To acknowledge, &c. Because as well, &c.

Declaration in case against a practiser for suing out a writ against the plaintiff, in the name of C. K. *without* C. K.'s *consent.*

Middlesex, to wit, *H. E.* late of in the said county, gentleman, was attached to answer *P. S.* esq; in a plea of trespass, that the said *H. E* contriving and maliciously intending unjustly to vex, disquiet and greatly injure the said *P.* on the 12th day of *February* in the term of St. *Hilary* in the tenth year of the reign of our sovereign lord the present king, prosecuted out of the court of our said lord the king of common bench at *W.* in the county of *M.* in the name of *C. K.* but without his assent, consent, agreement or notice, a certain writ of our said lord the king, of *Capias ad respondendum* against the said *P.* by the name of *P. S.* late of the *Middle Temple*, gent. directed to the sheriff of the said county of *M.* whereby it was commanded to him, that the said then sheriff should take the said *P.* if he should be found in his bailiwic, and him safely keep, so that he might have his body before the justices of our said lord the king at *W.* from the day of *Easter* in fifteen days then next ensuing, to answer the said *C. K.* on a certain plea of trespass on the case, upon promise in the same writ specified; and for not performing thereof, to the damage of the said *C. K.* of 20 *l.* By pretext of which said writ the then sheriff of the said county of *M.* after the issuing the said writ, and before the return thereof, *to wit*, on the 8th day of *April* in the 11th year of the reign of

our ſaid lord the preſent king, at the pariſh of *St. Clement Danes* in the ſaid county of *M.* at the proſecution and ſolicitation of the ſaid *H.* and without the aſſent or notice of the ſaid *C.* took and arreſted the ſaid *P.* by his body; and thereupon the ſaid *H.* without the aſſent or notice of the ſaid *C.* greatly injured the ſaid *P.* to the damage of the ſaid *P.* of 200*l.* And thereof he bringeth ſuit, &c.

Challenge.

Challenge at Niſi prius *to the array of the panel, becauſe the plaintiff was underſheriff, and arrayed the panel.*

Suffolk, *AND* now at this day, that is *to wit*, to ſay, *Friday* the 27th day of *Auguſt* in the 10th year of the reign of the ſaid king, at *Bury St. Edmund's* aforeſaid, come the aforeſaid *A.* in his proper perſon, and the ſaid *S.* by his ſaid attorney, and the jurors impanelled in this cauſe are demanded and came, and thereupon the aforeſaid *S.* challengeth the array of the panel aforeſaid, becauſe he ſaith that the ſaid panel was arrayed by the ſaid *A.* now and at the time of the ſaid arrayment made under ſheriff of the ſaid county of *S.* and deputy of *J. C.* eſq; ſheriff of the ſame county; And this the ſaid *S.* is ready to verify: Wherefore he prayeth the judgment of this court thereupon, and that the ſaid panel may be quaſhed, &c. *Wm. Whitaker.*

Covenant.

Covenant.

Middlesex, *to wit*, G. *F.* late of *Cavendish-Square* in the said county of *M.* esq; otherwise called the honourable *G. F.* esq; lieutenant-general of the island of *St. Christopher*, was summoned to answer to *T. B.* in a plea, that he keep with him the covenant made between them, according to the force, form and effect of certain articles of agreement thereof made between the said *T. B.* and the said *G. F.* and *M. W.* and *J. A.* &c. *And* whereupon the said *T.* by *R. B.* the younger his attorney saith, that *whereas* by certain articles of agreement indented and made at *W.* in the said county of *M.* on the 17th day of *January* in the year of our Lord 1776, between the said *T. B.* of *R.* in the county of *C* miner, of the one part, and the said *G. F. M. W.* and *J. A.* by the names of the honourable *G. F.* esq; lieutenant-general of the island of *St. Christopher's*, *M. W.* of the city of *Bristol*, whitawer, and *J. A.* of the island of *Spanish Town*, surgeon, as well on behalf of themselves, as others their co-partners and sharers of and in certain mines and mineral works in the island of *Spanish Town* in the *British* leward *Carribee islands* in *America*, one part of which said articles, sealed with the seal of the said *G. F.* the said *T. B.* bringeth here into court, bearing date the same day and year, the said *T. B.* for and in consideration of the wages or salary there-

Declaration in covenant.

Profert.

in mentioned, did covenant and agree to and with the ſaid *G. F. M. W.* and *J. A.* their and each of their executors, adminiſtrators and aſſigns, in manner following, *to wit*, *That* the ſaid *T. B.* from time to time, and at all times during the term of ſeven years, to be, commence and be accounted from the time of his the ſaid *T. B.*'s arrival at the iſland of *Spaniſh Town* aforeſaid, ſhould and would well and faithfully, and to the utmoſt of his ſkill and judgment, work for and ſerve the ſaid *G. F. M. W.* and *J. A.* and other their copartners, their and each of their executors, adminiſtrators and aſſigns, as overſeer and director in the ſinking and working their copper, and other mines and mineral works, lying and being in the iſland of *Spaniſh Town* aforeſaid, or in any other the *Britiſh* leeward *Carribbee iſlands* aforeſaid, and do and perform buſineſs relating to the ſaid mines, and the produce thereof, as they the ſaid *G. F. M. W.* and *J. A.* and other their copartners, any or either of them, ſhould from time to time direct and appoint; *And* alſo that he the ſaid *T. B.* ſhould not nor would, without leave firſt had and obtained, abſent himſelf from the ſervice aforeſaid, nor voluntarily nor negligently waſte or deſtroy any the goods, wares or materials of the ſaid *G. F. M. W.* and *J. A.* and their ſaid copartners, but in and concerning all and ſingular the ſaid buſineſs and ſervice aforeſaid to be true and faithful, and do and perform the ſame according to the beſt of his knowledge, and to the utmoſt benefit

and advantage of the ſaid *G. F. M. W.* and *J. A.* and their ſaid copartners, their executors, adminiſtrators and aſſigns. *And* in conſideration of the premiſſes, the ſaid *G. F. M. W.* and *J. A.* jointly and ſeverally for themſelves and their ſaid copartners, and their and each of their executors and adminiſtrators, did covenant, promiſe and agree, to and with the ſaid *T. B.* his executors and adminiſtrators, by the ſaid articles in manner following; that is to ſay, *That* they the ſaid *G. F. M. W.* and *J. A.* and their copartners, ſome or one of them, or ſome or one of their executors or adminiſtrators, ſhould and would pay unto the ſaid *T. B.* his executors and adminiſtrators, for the firſt year of the ſaid term before mentioned, the ſum of 20 *l.* of lawful *Britiſh* money, and for every other year of the ſaid term of ſeven years the ſum of 30 *l.* of like lawful money, and ſo proportionably, as ſalary or wages for the work and ſervice to be by him done and performed as aforeſaid; *And* alſo pay and allow him 5 *s.* per ton for every ton of copper which during the ſaid term ſhould be raiſed and dreſſed by the direction and aſſiſtance of him the ſaid *T. B.* All which ſaid wages and monies were to be paid and payable quarterly, by equal portions; *And* likewiſe find and provide him competent and ſufficient meat, drink, waſhing and lodging, during the ſaid term. *And* it was agreed by and between all and ſingular the ſaid parties, that in caſe the ſaid *G. F. M. W.* and *J. A.* and other their copartners, ſhould be minded

ed and desirous to determine and make void the said articles, at the expiration of one year from the commencement thereof, or at any time afterwards during the said term, and should give to the said *T. B.* one month's notice thereof in writing, then and after the expiration of such one month, the said term thereby contracted for, as well as the said articles, should cease and be void; any before contained to the contrary notwithstanding. *And* it was agreed by and between the said parties, that the said *G. F. M. W.* and *J. A.* their executors and administrators, some or one of them, should and would at their expence, costs and charges, find and provide a passage for the said *T. B.* to the said mines in *Spanish Town* aforesaid; and, if they dismissed him from their service before the expiration of the said term thereby contracted for, to return him back to *England* again expence-free, if he should chuse to return at the time of their so dismissing him, as in and by the said articles of agreement more fully appeareth. *And* although the said *T.* in pursuance of the said articles of agreement, afterwards, *to wit*, on the 21st day of *August* in the year of our Lord 1717, arrived at the said island of *Spanish Town* in foreign parts, and did there well and faithfully, and to the utmost of his skill and judgment, work for and serve the said *G. M.* and *J.* and their copartners, as overseer and director in the sinking and working their copper and other mines and mineral works lying and being in the island of *Spanish Town* aforesaid,

First breach.

aforesaid, and other the *British Caribbee islands* aforesaid, and did and performed business relating to the said mines and the produce thereof, as they the said *G. M.* and *J.* and other their copartners did from time to time direct and appoint, for a certain time, *to wit*, for the space of one year and a half then next following; by reason whereof a certain sum of money, *to wit*, the sum of 35 *l.* of lawful money of *Great Britain*, became due and payable to the said *T.* for his salary and wages aforesaid: *Nevertheless* the said *G. M.* and *J.* or any of them, or their said copartners or any of them, did not pay to the said *T.* the said 35 *l.* or any part thereof, but wholly neglected and refused to pay the same, and the said 35 *l.* are still due and in arrear to the said *T.* *And* the said *T.* further saith, that the said *G. M.* and *J.* or any of them, or their said copartners or any of them during the said service of the said *T.* or any part thereof, did not find and provide for him competent and sufficient meat, drink, washing and lodging, or any meat, drink, washing or lodging whatsoever, according to the form and effect of the said covenant of the said *G.* so made with the said *T.* in that respect as aforesaid, but neglected so to do, contrary to the form and effect of that covenant. *And* the said *T.* further saith, that during the said time that he the said *T.* was in the said services aforesaid, thirteen tons of copper oar were raised and dressed in the said mines and mineral works in the said island of *Spanish Town*, by the direction and assistance

Second breach.

Third breach.

ance of him the ſaid *T.* by reaſon whereof 65 *s.* of lawful money of *Great Britain* became due and payable to the ſaid *T. to wit*, 5 *s.* for each of thoſe thirteen tons of oar: *Nevertheleſs* the ſaid *G. M.* and *J.* did not nor did any of them pay to the ſaid *T.* the ſaid 65 *s.* or any part thereof, according to the form and effect of the ſaid covenant of the ſaid *G.* ſo made with the ſaid *T.* in that reſpect as aforeſaid, but wholly neglected to pay the ſame, and ſtill refuſeth to pay the ſame to the ſaid *T.* contrary to the form and effect of that covenant. *And* the ſaid *T.* ſaith, that the ſaid *G. M.* and *J.* did not, nor did any of them find and provide at their or any of their expence, coſts and charges, a paſſage for the ſaid *T.* to the ſaid mines in *Spaniſh Town* aforeſaid, according to the form and effect of the ſaid covenant of the ſaid *G.* ſo made with the ſaid *T.* in that reſpect as aforeſaid, but neglected ſo to do, contrary to the form and effect of that covenant. *And* the ſaid *T.* further ſaith, that although the ſaid *G. M.* and *J.* at the end of the ſaid one year and an half diſmiſſed the ſaid *T.* from their ſaid ſervice in the iſland of *Spaniſh Town* aforeſaid; and although he the ſaid *T.* then and there upon his ſaid diſmiſſion gave notice to the ſaid *G. M.* and *J.* that he was minded and willing to return back to *England*, and then and there requeſted them to return him back to *England* expence-free, according to the form and effect of the ſaid covenant of the ſaid *G.* ſo made with the ſaid *T.* in that reſpect as aforeſaid:

Fourth breach.

Fifth breach.

aforesaid: *Nevertheless* the said *G. M.* and *J.* did not, nor did any of them return the said *T.* back to *England* expence-free, according to the form and effect of the said covenant of the said *G. M.* and *J.* so made with the said *T.* in that respect as aforesaid, but neglected and refused so do do, contrary to the form and effect of that covenant: *And* so the said *T.* saith, that the said *G.* (although often requested) hath not kept with the said *T.* his said covenant so made with him the said *T.* in that respect as aforesaid, but hath broke it, and hath hitherto wholly denied and still denieth to keep the same with the said *T.* Whereby the said *T.* saith that he is injured, and hath damage to the value of 200 *l.* And thereof he bringeth suit, *&c.*

Plea.

And the said *G.* by *J. S.* his attorney cometh and defendeth the force and injury when, *&c.* and saith that the said *T.* ought not to have or maintain his action aforesaid against him; *Because*, as to the said breach of covenant by the said *T.* first above assigned, the said *G.* saith, that they the said *G. M.* and *J.* paid to the said *T.* all the salary and wages due to him from them, for the work and service by him done and performed, according to the form and effect of the said covenant in this behalf made, *to wit*, upon the 21st day of *February* in the year of our Lord 1740. at *W.* aforesaid: And of this he putteth himself upon the country.

As to the first breach.

And as to the said breach of covenant secondly above assigned, the said *G.* saith, that the said *G. M.* and *J.* did, during all the

As to the second breach.

the time that the ſaid *T.* continued in the ſaid ſervice, find and provide for him competent and ſufficient meat, drink, waſhing, and lodging, according to the form and effect of the ſaid covenant in this behalf made: And of this the ſaid *G.* putteth himſelf upon the country. *And* as to the ſaid breach of covenant thirdly above aſſigned, the ſaid *G.* ſaith, that the ſaid *G. M.* and *J.* paid and allowed to the ſaid *T.* 5 *s. per* ton for every ton of copper oar which was raiſed and dreſſed in the ſaid mines and mineral works in the ſaid articles mentioned, by the direction and aſſiſtance of the ſaid *T.* according to the form and effect of the ſaid covenant in this behalf made, *to wit*, upon the ſaid 21ſt day of *February* in the ſaid year 1740. at *W.* aforeſaid: And of this he putteth himſelf upon the country. *And* as to the ſaid breach of covenant fourthly above aſſigned, the ſaid *G.* ſaith, that the ſaid *G. M.* and *J.* did find and provide at their own expence, coſts and charges, a paſſage for the ſaid *T.* to the ſaid mines in *Spaniſh Town* aforeſaid, according to the form and effect of the ſaid covenant in his behalf made, *to wit*, upon the 21ſt day of *May* in the ſaid year of our Lord 1777. at *W.* aforeſaid: And of this the ſaid *G.* putteth himſelf upon the country. *And* as to the ſaid breach of covenant laſtly above aſſigned, the ſaid *G.* ſaith, that the ſaid *G. M.* and *J.* at the end of the ſaid one year and an half did not diſmiſs the ſaid *T.* from their ſaid ſervice in the iſland of *Spaniſh Town* aforeſaid, as the ſaid *T.* hath by his ſaid

As to the third breach.

As to the fourth breach.

As to the fifth breach.

said declaration above alledged: And of this also the said *G.* putteth himself upon the country. *Geo. Wilson.*

Herefordshire, to wit, *J. T.* late of the parish of *W.* in the said county, husbandman, was summoned to answer to *E. J.* and *M. J.* in a plea, that he keep with them the covenant between them made, according to the force, form and effect of a certain indenture thereof between them made, &c. *And whereupon* the said *E.* and *M.* by *R. M.* their attorney say, *That whereas* by a certain indenture made at the parish of *W.* aforesaid, on the 7th day of *February* in the year of our Lord 1772. between the said *E.* and *M.* by the names of *E J.* and *M. J.* both of the parish of *W.* aforesaid in the county of *H.* aforesaid, spinsters, in trust and to the use of *J. J.* their nephew, being then under the age of twenty-one years, of the one part, and the said *J.* by the name of *J. T.* of the parish of *W.* aforesaid and county aforesaid, husbandman, of the other part, *The* counterpart of which said indenture, sealed with the seal of the said *J.* the said *E.* and *M.* bring here into court, bearing date the same day and year, the said *E.* and *M.* for the consideration therein mentioned, demised, granted, let and to farm let, unto the said *J.* his executors, administrators and assigns, All that messuage or tenement wherein the said *J.* then dwelt, situate, lying and being at *L.* in the several parishes of *W.* and *G.* in the county of *H.* aforesaid, together with the

Declaration in covenant on a lease for not repairing, and for committing waste. Hil. 11 G. 2. ro. 1392.

Recital of lease.

Profert.

Demise.

Premisses.

the outhouſes, barns, ſtables, ſheep-cotes, buildings gardens and orchards, lands, arable, meadow and paſture, coppice of wood, known by the ſeveral names of *M.* and *T.* (but the fore parlour, and likewiſe one room or chamber in the ſaid dwelling-houſe which was above the parlour, and alſo one part of the little garden wherein the ſtocks grew, were excepted and reſerved to the uſe of the ſaid *E.* and *M.* their heirs and aſſigns) together with all ways, waters, water-courſes, eaſements, privileges, profits and appurtenances thereto belonging or in any wiſe appertaining, unto the ſaid *J.* his executors, administrators and aſſigns; *To have and to hold* all and ſingular the ſaid dwelling-houſe or tenement, out-houſes, barns, ſtables, ſheep-cotes, buildings, edifices, gardens and orchards, lands arable, meadow and paſture, with their and every of their appurtenances, as before in the ſaid indenture mentioned to be demiſed to the aforeſaid *J.* his executors, adminiſtrators and aſſigns, from the 2d day of *February* then laſt paſt, for and during and until the full end and term of four years, from thenceforth fully to be complete and ended: *Yielding and paying* therefore yearly and every year, during the aforeſaid term, unto the ſaid *E.* and *M.* their heirs and aſſigns, the yearly rent or ſum of 56 *l.* of lawful *Engliſh* money, to be paid at theſe two uſual times of payment in the year, (that is to ſay) at and upon every 2d day of *February* and every 2d day of *Auguſt*, by even and equal parts or portions; the firſt payment

Habendum.

Reddendum.

to

to commence and take place at and upon the 2d day of *August* next ensuing the date of the said indenture. *And* it was by the said indenture covenanted and agreed upon by and between the said parties above-mentioned, that they the said *E.* and *M.* their heirs and assigns, should and would before the feast day of St. *Michael* the archangel next ensuing the date of the said indenture, at their own proper costs and charges well and sufficiently repair, amend and put the aforesaid premisses, by the said indenture granted, in a good and tenantable repair: *And* he the said *J.* did for himself, his executors, administrators and assigns, covenant, promise and agree, to and with the said *E.* and *M.* their heirs and assigns, that he the said *J.* his executors, administrators and assigns, should and would from time to time, and at all times during the term by the said indenture granted, at his or their own proper costs and charges well and sufficiently repair, amend, maintain, sustain, uphold and keep all and singular the said demised premisses, with their and every of their appurtenances, in so good and tenantable reparation and amendment: *And* that the said *J.* his executors, administrators and assigns, should not at any time during the said term commit, cause, procure or suffer to be committed or done any manner of wilful waste, spoil or destruction, in or upon the said demised premisses, in cutting down any timber-trees, (except what were necessary for the use of the said premisses) as by the said indenture

Covenants.

Defendant entered. denture more fully appeareth: *By virtue* of which demise the said *J.* entered into the said demised premisses with the appurtenances, and was possessed thereof for and during the said four years to him granted as aforesaid, *to wit*, until and upon the 2d day of *February* in the year of our Lord 1776. *And* altho' the said *E.* and *M.* before the said feast of St. *Michael* the archangel next after the date of the said indenture, at their own proper costs and charges did well and sufficiently repair, amend and put the aforesaid premisses by the said indenture granted in tenantable repair: *First breach.* *Nevertheless* the said *J.* from time to time, and at all times during the residue of the said term, did not well and sufficiently repair, amend, maintain, sustain, uphold and keep the said demised premisses in so good and tenantable reparation and amendment, according to the form and effect of the said covenant of the said *J.* so made with the said *E.* and *M.* in that respect as aforesaid. *Second breach.* *And* the said *E.* and *M.* further say, that the said *J.* during the said term, *to wit*, on the 1st day of *February* in the year of our Lord 1776. aforesaid, did wilfully commit waste, spoil and destruction, in and upon the said demised premisses, in cutting down timber-trees, *to wit*, 20 oaks, 30 ashes, and 40 elms, growing in and upon the said demised premisses, (other than what was necessary for the use of those premisses) and taking, carrying away and detaining the timber thereof, contrary to the form and effect of his said covenant so made with the

ſaid *E.* and *M.* in that reſpect as aforeſaid: *And* ſo the ſaid *J.* (although often requeſted) hath not kept his ſaid covenant ſo made as aforeſaid with the ſaid *E.* and *M.* but hath broke it, and has hitherto wholly denied, and ſtill doth deny to keep the ſame with the ſaid *E.* and *M.* Whereby the ſaid *E.* and *M.* ſay that they are injured, and have damage to the value of 40 *l.* And thereof they bring ſuit, &c

And the ſaid *J.* by *T. R.* his attorney cometh and defendeth the force and injury when, &c. and ſaith that the ſaid *E.* and *M.* ought not to have their ſaid action againſt him; becauſe, *As to* the breach of covenant above ſuppoſed to be made in this, That altho' the ſaid *E.* and *M.* before the ſaid feaſt of St. *Michael* the archangel next after the date of the ſaid indenture, at their own proper coſts and charges, did well and ſufficiently repair, amend and put the aforeſaid premiſſes, by the ſaid indenture granted, in good and tenantable repair: *Nevertheleſs* the ſaid *J.* from time to time, and at all times during the reſidue of the ſaid term, did not well and ſufficiently repair, amend, maintain, ſuſtain, uphold and keep the ſaid demiſed premiſſes in ſo good and tenantable reparation and amendment, according to the form and effect of the ſaid covenant of the ſaid *J.* ſo made with the ſaid *E.* and *M.* in that reſpect as aforeſaid, he the ſaid *J.* ſaith, that the ſaid *E.* and *M.* before the ſaid feaſt-day of St. *Michael* the archangel next after the date of the ſaid indenture, did not well

Plea.

As to the firſt breach.

and fufficiently repair, amend and put the aforefaid premiffes by the faid indenture granted in good and tenantable repair, as they the faid *E.* and *M.* have by their faid declaration above alledged: And hereupon he putteth himfelf upon the country: *And* the faid *E.* and *M.* do fo likewife. *And as to* the breach of covenant above fuppofed to be made in this, that the faid *J.* did commit wilful wafte, fpoil and deftruction in and upon the faid demifed premiffes, in cutting down the faid timber-trees, growing in and upon the faid demifed premiffes, (other than what were neceffary for the ufe of thofe premiffes) and taking, carrying away, and detaining the timber thereof, contrary to the form and effect of the faid covenant fo made with the faid *E.* and *M.* in that refpect as aforefaid, the faid *J.* faith, that he the faid *J.* did not commit the faid wafte, fpoil or deftruction, in manner and form as the faid *E.* and *M.* have by their faid declaration above fuppofed; and thereupon he putteth himfelf upon the country: *And* the faid *E.* and *M.* do fo likewife. Therefore the fheriff is commanded, that he caufe to come in eight days from the purification of the bleffed virgin *Mary* twelve, *&c.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Becaufe as well, *&c.*

Iffue.

As to the fecond breach.

Iffue.
Venire.

Debt.

Debt.

Weſtmorland, to wit, *J. S.* late of *N.* in the county aforeſaid, huſbandman, was ſummoned to anſwer *J. D.* Eſq; of a plea, that he render to him 15*l.* which he oweth to him, and unjuſtly detaineth from him, *&c.* *And* whereupon the ſaid *J.* by *R. S.* his attorney ſaith, that *whereas* the ſaid *J.* for two years laſt paſt and more, was and yet is farmer and tenant of all the tithes of corn and grain in the rectory of *K.* in the ſaid county, belonging or appertaining to the ſaid rectory, yearly growing, coming or renewing within the ſaid pariſh of *K.* aforeſaid, and the bounds and limits and tithable places of the ſaid pariſh: *And whereas* the ſaid *J. S.* on the 30th day of *September* in the year of our Lord 1772. and from thence hitherto was the farmer, occupier and poſſeſſor of twenty acres of land, with the appurtenances, within the rectory and pariſh aforeſaid, and the bounds, limits, and tithable places of the ſame pariſh, the tithes of corn and grain yearly growing, coming or renewing, of, in, and from which ſaid twenty acres of land, within forty years next before the ſtatute made in the parliament of the lord *Edw.* VI. late king of *E.* held at *W.* in the 2d year of his reign, and provided for and concerning the payment of tithes, were of right yielded, and payable and paid to the owner of the rectory aforeſaid, or his farmer

Declaration in debt on the ſtat. 2 E. 6. c. 13. for not ſetting forth tithes.

Plaintiff farmer of the tithes.

Defendant occupier of lands.

of the ſaid rectory, or of the tithes thereof for the time being, in their proper kinds: *Sows the land with corn.* And the ſaid *J.* being ſo farmer, occupier and poſſeſſor of the ſaid twenty acres of land, with the appurtenances; and the ſaid *J.* being farmer of the ſaid tithes as aforeſaid, the ſaid *J.* afterwards, *to wit*, the 1ſt day of *April* in the year of our Lord 1773. ſowed the ſaid twenty acres of land with oats, and at the time of corn-harveſt then *Reaps it.* next following, *to wit*, the 20th day of *September* in the year of our Lord 1773. did cut and reap all the oats growing upon the ſaid twenty acres of land, the tithes of which ſaid oats ſo cut and reaped by him, did belong to the ſaid *J.* as ſuch farmer of the tithes aforeſaid, and of right ought to have *Does not ſet forth the tithes.* been yielded and paid to him: *Nevertheleſs* the ſaid *J.* not regarding the ſtatute aforeſaid, nor dreading the penalty therein contained, did not divide, ſever or ſet out the tenth part of the oats aforeſaid, or any part thereof, for the tithes thereof, nor did agree with the ſaid *J.* being farmer of the ſaid tithes as aforeſaid, for the tithes of the ſaid oats; but afterwards, *to wit*, the 28th day of *September* in the year of our Lord 1773. aboveſaid, at the pariſh of *K.* aforeſaid, did take and carry away all the ſaid oats, coming in and upon the ſaid twenty acres of land, by him cut and reaped as aforeſaid, from the place where they grew and ought to have been tithed, without ſetting forth the tithes thereof, and without any compoſition or agreement for the tithes thereof, had or made with

with the ſaid *J.* being then farmer of the tithes as aforeſaid, againſt the form of the ſtatute aforeſaid. *And* the ſaid *J.* in fact ſaith, that the ſame tithes or tenth part of the ſaid oats ſo as aforeſaid taken and carried away, at the time of ſuch taking and carrying away thereof, were reaſonably worth 5 *l.* Wherefore an action accrued to the ſaid *J.* to demand and have of the ſaid *J.* the aforeſaid 15 *l.* for the treble value of the ſaid tithes ſo taken and carried away by the ſaid *J.* againſt the form of the ſtatute aforeſaid: *Nevertheleſs* the ſaid *J.* (although often requeſted) hath not rendered the aforeſaid 15*l.* or any part thereof, to the ſaid *J.* but hath hitherto altogether refuſed, and ſtill doth refuſe, to render the ſame to him, to the damage of the ſaid *J.* of 10*l.* And thereof he bringeth ſuit, *&c.*

Value of the tithes.

Glouceſterſhire, to wit, *J. V.* farmer of the rectory of *M.* in the county aforeſaid, complaineth of *S. H.* in the cuſtody of the marſhal, *&c.* of a plea, that he render to him 6*l.* of lawful money of *England*, which he oweth him, and unjuſtly detaineth; *For that*, to wit, that *whereas* the ſaid *J.* on the 25th day of *March* in the 2d year of the reign of our ſovereign lord *James* II. now king of *England*, &c. and from that time continually hitherto, hath been and ſtill is farmer of the rectory impropriate of *M.* with the appurtenances, in the county aforeſaid, and of all and ſingular the tithes to the ſaid rectory in any manner belonging and appertaining, yearly coming, growing, renewing, or

Declaration in debt on the ſtat. of 2 & 3 E. 6. c. 13. for not ſetting forth tithes. Plaintiff farmer of the rectory.

or happening within the ſaid pariſh of *M.* in the county aforeſaid, and the bounds, limits and tithable places of the ſaid pariſh. And the ſaid *S.* on the 25th day of *March* in the 2d year aforeſaid, and continually afterwards, from that time until the exhibiting of this bill, has been and now is the occupier and poſſeſſor of a cloſe of meadow called *Foxwell's Wood*, containing by eſtimation thirteen acres, and of two acres of arable land in the northfield of *M.* aforeſaid, and within the pariſh of *M* aforeſaid in the county aforeſaid, and the bounds, limits and tithable places of the ſaid pariſh; *The* tithes of the grain and hay yearly growing, coming, and renewing out of and from which ſaid cloſe of paſture and two acres of land, for forty years next before the making a certain act made in the parliament of *Edward* VI. late king, held at *W.* in the county of *M.* in the 2d year of his reign, made and provided for the true payment of tithes in their proper kinds and ſpecies, were of right due and payable to the rector of the ſaid rectory, or to his farmer or deputy of the ſaid rectory for the time being. *And* the ſaid *S.* ſo as aforeſaid, for the whole time aforeſaid being occupier and poſſeſſor of the ſaid cloſe of meadow and two acres of land, and the ſaid *J.* being ſo as aforeſaid farmer of the ſaid rectory, the ſaid *S.* afterwards, *to wit*, on the ſaid 25th day of *March* in the 2d year aforeſaid, ploughed and ſowed the ſaid two acres of land with wheat; and afterwards, *to wit*, on the 6th day of *September* in the ſaid

Defendant occupier of, &c.

The tithes payable for forty years before the ſtatute.

Defendant plows the land and reaps the corn, &c.

ſaid 2d year of the reign of our ſaid lord the preſent king, mowed and made into hay all the graſs then growing in and upon the ſaid cloſe of paſture, and cut down all the wheat then growing in and upon the ſaid two acres of land; the tithes of which ſaid hay and wheat as aforeſaid growing and coming out of and from the ſaid cloſe of meadow and the ſaid two acres of land, of right belonging to the ſaid *J.* as farmer of the ſaid rectory, and ought of right to have been rendered and paid to him. *Yet* the ſaid *S.* being a ſubject of our ſaid lord the preſent king of this kingdom of *England*, no ways regarding the ſaid ſtatute, nor any ways fearing the penalties contained in the ſame, did not divide, ſeparate, render and pay the tenth part of the ſaid wheat and hay, or any parcel thereof, for the tithes of the ſame, nor any ways compounded or agreed with the ſaid *J.* being ſo as aforeſaid farmer of the ſaid rectory, for the tithes of the ſame, or of any parcel thereof; but the ſaid *S.* afterwards, *to wit*, on the 10th day of *October* in the 2d year aforeſaid, then and there took and carried away all the grain and hay ſo as aforeſaid growing and coming, and mowed in that year upon the ſaid cloſe of meadow and two acres of land, from the ſaid places where the ſaid hay and wheat grew, without any putting out of the tenth part of the ſame, and without any compoſition or agreement had or made with the ſaid *J.* for the tithes of the ſame, which tithes were then worth

Does not ſet forth the tithes.

Per quod actio accrevit.

40 *s.* of lawful money of *England*; *Whereby* an action accrued to the said *J.* to demand and have of the said *S.* the 6 *l.* aforesaid, being treble the value of the tithes of the said wheat and hay taken and carried away by the said *S.* as aforesaid, contrary to the form of the said statute: *Yet* the said *S.* although often requested, *&c.* hath not yet paid the said 6 *l.* to the said *J.* But, *&c.*

Declaration in debt Qui tam, &c. *on the stat.* 29 Car. 2. c. 7. *for not goingtochurch.* 1 Bro. 91. 1 Salk. 30. 373.

Sussex, to wit, *S. A.* Gent. who sueth in this behalf as well for our lord the king as for himself, complaineth of *T. F.* the elder, in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself, of a plea, that he render to our said lord the king, and to the said *S. A.* who as well, *&c.* 200 *l.* of lawful money of *England*, which he oweth them, and unjustly detaineth; for that, *that* the said *T. F.* on the 20th day of *May* in the 34th year of the reign of our sovereign lord *Charles* II. now king of *England*, &c. being above the age of sixteen years, and then and from thence continually afterwards, for the space of ten months thence next ensuing, an inhabitant, and dwelling within this kingdom of *England*, to wit, at the parish of *All-Saints* in *Lewes* in the county aforesaid, did not repair, nor endeavour to repair to his parish-church of *All Saints* in *Lewes* aforesaid, nor to any other church, chapel, or usual place of common prayer and preaching, or other divine service there used and administred according to the form of the statute in such case made and provided, but for the whole time

time aforesaid voluntarily and obstinately, without any lawful or reasonable cause or excuse, did forbear from the same, contrary to the form of the statute in such case made and provided: *Whereby* an action accrued, as well to our said lord the king, as to the said *S.* who as well, *&c.* to demand and have of the said *T.* the said 200*l.* *to wit*, 20*l.* for every month of the said ten months in which the said *T.* contrary to the form of the said statute absented himself as aforesaid from church, chapel, or place of common prayer and preaching, or other divine service there: *Yet* the said *T.* altho' often requested, *&c.* did not pay the said 200*l.* to our said lord the king and the said *S.* who as well, *&c.* but hath hitherto intirely refused, and still doth refuse to pay them the same, to the damage of the said *S.* of 40*l.* And thereof as well for our said lord the king as for himself he bringeth suit, *&c.*

Actio accrevit.

And the said *T. F.* by ——— his attorney cometh and defendeth the force and injury when, *&c.* and saith, that he doth not owe to our said lord the king and the said *S.* who as well, *&c.* the said 200*l* nor any part thereof, in manner and form as the said *S.* who as well, *&c.* above complaineth against him; And of this he putteth himself upon the country: *And* the said *S.* who as well, *&c.* doth so likewise. *Therefore* let a jury thereupon come before our lord the king at *W.* on *Wednesday* next after three weeks of the *Holy Trinity*; And who neither, *&c.* To

Plea, Nil debet.

Issue.

Venire *awarded.*

recognize, *&c.* Becauſe as well, *&c.* The ſame day is given to the parties aforeſaid at the ſame place, *&c.*

Declaration in debt againſt a gaoler, on the Habeas corpus *act*, 31. Car. 2. c. 2. *for denying a copy of a commitment.*

Surrey, to wit, *J. F.* gent. complaineth of *W. L.* eſq; marſhal of the *Marſhalſea* of the court of our lord and lady the preſent king and queen, before the ſaid king and queen preſent here in court, in his proper perſon, of a plea, that he render to him 100*l.* of lawful money of *England*, which he oweth him, and unjuſtly detaineth; for that, *to wit*, *That whereas* after the firſt day of *July* in the year of our Lord 1679, he the ſaid *J. F.* in vacation-time and out of term, *to wit*, on the 20th day of *March* in the 2d year of the reign of our lord *William* and lady *Mary*, now king and queen of *England*, &c. at the pariſh of *St. Geo ge* in *Southwark* in the county of *Surrey*, was taken and detained in priſon by the ſaid *W. L.* without any warrant or commitment for treaſon or felony expreſſed in the ſame: And alſo whereas afterwards, *to wit*, on the 29th day of *March* in the ſaid 2d year of the reign of our ſaid lord the king and lady the queen, at the pariſh aforeſaid in the county of *Surrey* aforeſaid, the ſaid *J. F.* demanded of the ſaid *W. L.* a true copy of the warrant of commitment and detainer of the ſaid *J. F.* in the ſaid priſon by him the ſaid *W. L. Yet* the ſaid *W. L.* altho' often requeſted, within the ſaid ſpace of ſix hours next after the ſaid demand, did not deliver a copy of the warrant of commitment and detainer of the ſaid

ſaid *J. F.* in the cuſtody of the ſaid *W. L.* but he intirely neglected and omitted to deliver the ſame to him, contrary to the form of the ſtatute in ſuch caſe lately made and provided; whereby and by force of the ſaid ſtatute the ſaid *W. L.* has forfeited the ſum of 100 *l.* Whereby and by force of the ſaid ſtatute an action accrued to the ſaid *J. F.* being the party aggrieved, to demand and have of the ſaid *W. L.* the ſaid 100 *l.* *Yet* the ſaid *W.* altho' often requeſted, *&c.* hath not yet paid the ſaid 100 *l.* or any part thereof, to the ſaid *J.* but hath hitherto intirely refuſed, and ſtill doth refuſe to pay him the ſame, to the damage of the ſaid *J.* of 10 *l.* And thereof he bringeth ſuit, *&c.*

Elſewhere, as it appears of the term of *Eaſter*, in the ſeventeenth year of the reign of king *George* the third, on the roll, it is thus contained:

Declaration of a precedent term, in debt on ſtatute 7 & 8 W. 3. c. 25. §. 6. *againſt a returning officer, for refuſing a copy of a poll.*

Somerſetſhire, to wit, *T. S.* late of the borough of *L.* in the county aforeſaid, gentleman, was ſummoned to anſwer, *E. P.* eſq; of a plea, that he render to him 500 *l.* which he oweth him, and unjuſtly detaineth; for that, *to wit*, that *whereas* the town of *I.* in the county aforeſaid is an antient borough, and that two burgeſſes of the ſame borough to come to every parliament of our lord the king and his predeceſſors, kings and queens of *England*, from the time to the contrary whereof the memory of man is not, have been choſen and uſed to be choſen by the burgeſſes and

Cuſtom to chuſe members.

and inhabitants of the ſaid borough, having votes in that election: *And whereas* a certain writ of our lord the preſent king, iſſued out of his chancery at *W.* in the county of *M.* on the 7th day of *January* in the 16th year of his reign, bearing date the ſame day and year, directed to the ſheriff of the ſaid county of *S.* by which ſaid writ our ſaid lord the king reciting, that whereas our ſaid lord the king, by the advice and conſent of his council, for certain arduous and urgent affairs concerning our ſaid lord the king, the ſtate and defence of his kingdom of *Great Britain* and the church, had ordered a certain parliament to be held at his city of *W.* on the 17th day of *March* then next enſuing, and there to have conference and treat with the prelates, great men and peers of his ſaid kingdom, did command and ſtrictly injoin the then ſheriff of the county of *S.* that proclamation being made in his next county-court to be holden after the receipt of the ſaid writ, at the time and place aforeſaid, two knights girt with ſwords, of the moſt fit and diſcreet of the ſaid county, and of every city of the ſaid county two citizens, and of every borough two burgeſſes of the moſt diſcreet and ſufficient, freely and indifferently by them who at ſuch proclamation ſhould be preſent, the ſaid ſheriff ſhould cauſe to be elected, according to the form of the ſtatute in that caſe made and provided, and the names of ſuch knights, citizens and burgeſſes ſo elected, in certain indentures there-

Writ of election.

thereupon to be made between the ſaid ſheriff and them who ſhall be preſent at ſuch election to be inſerted, whether the perſon ſo elected ſhould be preſent or abſent, and them at the ſaid day and place ſhould cauſe to come; ſo that the ſaid knights full and ſufficient power for themſelves and the commonalty of the ſaid county, and the ſaid citizens and burgeſſes for themſelves and the commonalty of the ſaid cities and boroughs, ſeverally from them might have, to do and conſent to thoſe things which then and there by the common council of his ſaid majeſty's kingdom (with God's aſſiſtance) ſhould happen to be ordained upon the affairs aforeſaid; ſo that through defect of ſuch power, or by an improvident election of ſuch knights, citizens and burgeſſes, the ſaid affairs might not in any wiſe remain unprovided for; Willing nevertheleſs, that neither the ſaid ſheriff, nor any other ſheriff of his ſaid majeſty's kingdom aforeſaid ſhould in any wiſe be elected; and the ſaid election in full county of the ſame ſheriff ſo made, diſtinctly and openly under the ſeal of the ſaid ſheriff, and the ſeals of them who ſhould be preſent at ſuch election, at ſuch election the ſheriff ſhould certify to our ſaid lord the king, in his Chancery, at the day and place aforeſaid, without delay, remitting to our ſaid lord the king one part of the aforeſaid indentures ſewed to the ſaid indentures together with the ſaid writ, as by the ſaid writ now remaining in the court of Chance-

ry

ry of our ſaid lord the king at *W.* aforeſaid more fully appears: *Which* ſaid writ afterwards, *to wit*, on the 26th day of *January* in the ſaid 16th year of the reign of our ſaid lord the preſent king, at *I.* aforeſaid in the ſaid county of *S.* was delivered to one *J. T.* eſq; then ſheriff of the ſaid county of *S.* to be executed in form aforeſaid. *By virtue* of which ſaid writ the ſaid ſheriff afterwards, *to wit*, on the ſaid 26th day of *January* in the 16th year aforeſaid, there made his certain precept in writing, ſealed with the ſeal of his ſaid office of ſheriff, directed to the bailiff of the ſaid borough of *I.* in the county aforeſaid, of and for the electing within that borough two burgeſſes of the ſame borough, according to the form and effect of the ſaid writ: *Which* ſaid precept afterwards, *to wit*, on the ſaid 26th day of *January* in the 16th year aforeſaid, at *I.* aforeſaid, was delivered to the ſaid *T. S.* then bailiff of the ſaid borough of *I.* (to which ſaid bailiff the execution of the ſaid precept belonged) to be executed in form of law. *By* pretext of which ſaid precept afterwards, *to wit*, on the 2d day of *February* in the ſaid 16th year of the reign of our lord the preſent king, at *I.* aforeſaid, the election of two burgeſſes for the ſame borough of *I.* aforeſaid, to come to the ſaid parliament, according to the form and effect of the ſaid writ, came on. *And* thereupon the ſaid *E. P.* and one Sir *J. B.* knt. *W. B.* eſq; and *J. H* eſq; were and ſtood candidates at the ſaid election, that of them

Precept to a defendant, as bailiff of the borough.

The election

them two might be chosen to be burgesses of parliament for the same borough; and many burgesses of the said borough were present at the said election, and having votes in that behalf, then and there gave their votes for the said *E P.* to be one of the said two burgesses of parliament for the said borough; and divers burgesses of the said borough also present at the said election, then and there gave their votes for the said Sir *J. B.* to be another of the said two burgesses of parliament for the said borough; and divers other burgesses of the said borough also present at the said election, then and there gave their votes for the said *W. B.* and *J. H.* to be the two burgesses of parliament for the said borough. *So* that for the making the said election plain, a poll of the voters at the said election being required and demanded by some of them, was then and there had, and taken in writing before the said *T. S.* then bailiff of the said borough as aforesaid; and he the said *T. S.* then and there took and had the said poll. *And* after the poll of voters of, in and for the said election, taken, had and ended, *to wit*, on the 10th day of *February* in the 16th year aforesaid, at *I* aforesaid, the said *E. P.* requested the said *T S.* then bailiff of the said borough as aforesaid, to deliver to the said *E. P.* a copy of the poll of voters found at the said election, and then and there was ready and offered to pay to the said *T. S.* any reasonable sum of money for writing thereof, which

Poll taken.

Copy demanded.

Refused. which he should demand for the same: *Yet* the said *T. S.* bailiff of the said borough as aforesaid, (to which said bailiff the execution of the said precept for electing the said burgesses then belonged) no ways regarding the duty of his office of bailiff of the said borough in this behalf, and the statute in such case made and provided, nor any ways fearing the penalty contained in the said statute, did not then or afterwards deliver to the said *E. P.* a copy of the poll of voters at the said election for the said borough, but voluntarily then and afterwards intirely refused to deliver the same to him, contrary to the said statute made and provided:

Actio accrevit. *Whereby* an action accrued to the said *E. P.* to demand and have of the said *T. S.* the said 500 *l.* *Yet* the said *T S.* although often requested, hath not yet paid the said 500 *l.* to the said *E. P.* but hath hitherto intirely refused, and still doth refuse to pay him the same: Wherefore he saith that he is injured, and hath damage to the value of 40 *l.* And thereof he bringeth suit, *&c.*

Imparlance. *And* now at this day, *to wit*, on the morrow of the *Holy Trinity*, in the 2d year of the reign of our said lord the present king, in this same term, until which day the said *T.* had leave to imparle, and then to answer, *&c.* cometh as well the said *E.* by his attorney aforesaid, as the said

Non debet. *T.* by *J. L.* his attorney. *And* the said *T.* defendeth the force and injury when, *&c.* and

and faith that he doth not owe to the faid *E.* the faid 500*l.* or any part thereof, in manner and form as he the faid *E.* hath above declared againft him; And of this he putteth himfelf upon the country: *And* the faid *E.* doth fo likewife, *&c.* *Therefore* let a jury come thereupon before our lord the king at *W.* in three weeks of the *Holy Trinity*; And who neither, *&c.* To take cognizance, *&c.* Becaufe as well, *&c.* The fame day is given to the parties aforefaid at the fame place, *&c.* *At which day* the faid parties came by their attornies aforefaid before our lord the king at *W.* and the fheriff did not return the faid writ: *Therefore* let a jury thereupon, as before, come before our lord the king at *W.* in fifteen days of St. *Martin*; And who neither, *&c.* To take cognizance, *&c.* Becaufe as well, *&c.* The fame day is given to the parties aforefaid at the fame place, *&c.* *At which day* the faid parties came by their attornies aforefaid before our lord the king at *W.* and the fheriff did not return the faid writ. *Therefore* let a jury thereupon, as before, come before our lord the king at *W.* on the octave of the purification of the bleffed Virgin *Mary*; And who neither, *&c.* To take cognizance, *&c.* Becaufe as well, *&c.* The fame day is given to the parties aforefaid at the fame place. *Afterwards* the procefs being continued between the parties aforefaid of the plea aforefaid, by the jury being refpited between them, before our lord the king at *W.* until fifteen

Iffue.

Venire.

Vic. non mifit breve.

Alias venire.

Vic. non mifit breve.

Alias venire.

Procefs continued.

Nifi prius.

fifteen days of *Easter* thence next ensuing, unless the justices of our lord the king assigned to take the assizes in the county aforesaid, shall first come on *Monday* the 18th day of *March* at the castle of *T.* in the county aforesaid, by form of the statute, *&c.* for default of the jurors, *&c.* *At which* said fifteen days of *Easter*, before our lord the king at *W.* the said *E.* came by his attorney aforesaid; and the said justices of our lord the king assigned to take the assizes, *&c.* before whom, *&c.* sent here their record before them had in these words; *Afterwards*, on the day and at the place within contained, before *R. P.* esq; one of the barons of the Exchequer of our lord the king, and Sir *R. E.* knt. one of the justices of our lord the king assigned to hold pleas before the king himself, justices of our lord the king assigned to take the assizes in the county of *S.* by form of the statute, *&c.* come as well the within named *E. P.* esq; as the within written *T. S.* bailiff of the borough of *I.* within written, in the county aforesaid, by their attornies within contained, and the jurors of the jury, whereof mention is within made, being demanded, some of them, *to wit*, *R. C.* and *R. C.* come and are sworn upon that jury; and because the residue of the jurors of the same jury do not appear, *Therefore* others of those standing about, hereunto chosen by the sheriff of the county aforesaid, at the request of the said *E. P.* and by the command of the said justices, are added anew, whose

Postea.

Tales.

whose names are affiled in the within written panel, according to the form of the statute in such case made and provided; and the jurors so added anew, *to wit*, *J. S. W. E. J. S. J. C. L. D. H. P. N. H. R. L J. D.* and *H. T.* being also demanded, come, who together with the said other jurors first hereunto impanelled and sworn, being chosen, tried and sworn to speak the truth of the within contained, say upon their oath, *that* the said *T. S.* oweth to the said *E. P.* the within mentioned 500 *l.* and every part thereof, in manner and form as the said *E. P.* hath within declared against him: And they assess the damages of the said *E. P.* by occasion of the detaining the within written debt, besides his costs charges by him about his suit in this behalf expended, to 2 *d.* and for those costs and charges to 40 *s.* *Therefore* it is considered, that the said *E. P.* recover against the said *T. S.* his said debt, and the damages aforesaid assessed by the said jury in form aforesaid; and also 18 *l.* for the increase of his said costs and charges, adjudged by the court of our said lord the king now here, to the said *E. P.* by his assent: Which said damages amount in the whole to 20 *l.* and 2 *d.* And the said *T. S.* in mercy, *&c.*

Verdict for the plaintiff.

Judgment.

Elsewhere, as it appears of the term of St. *Michael* in the 16th year of the reign of king *Geo.* III. in the 631 *Roll*, it is thus contained: *Kent*, to wit, *E. B.* late of *H.* in the said county, gent. and *P. B.* late of the same place, gent. have been summoned to

Declaration of a precedent term, in debt on the statute 9 Ann. c. 25. *for taking*

partridges in the night.

anſwer to *J.* earl of *W.* who ſueth as well for himſelf as for the poor of the pariſh of *N.* in the ſaid county, in a plea, that they render to them 40*l.* which they owe to them, and unjuſtly detain, &c. *And* whereupon the ſaid *J.* earl of *W.* who ſueth as well for himſelf as the poor of the ſaid pariſh in this reſpect, by *F. M.* his attorney, ſaith, that the ſaid *E.* and *P.* after the firſt day of *May* in the year of our Lord 1711, *to wit,* on the 16th day of *Auguſt* in the year of our Lord 1742, in the night-time of that day, at the pariſh aforeſaid, did take certain partridges, *to wit,* eight partridges, contrary to the ſtatute in ſuch caſe lately made and provided; by reaſon whereof, by force of the ſtatute in ſuch caſe lately made and provided, an action has accrued to the ſaid *J.* earl of *W.* who ſueth as well, &c. to demand and have of the ſaid *E.* and *P.* the ſaid 40*l.* *to wit,* 5*l.* for each of the ſaid eight partridges ſo taken by them as aforeſaid, for himſelf and the poor of the ſaid pariſh: *Nevertheleſs* the ſaid *E.* and *P.* altho' often requeſted, have not rendered to the ſaid *J.* earl of *W.* and the poor of the ſaid pariſh, the ſaid 40*l.* or any part thereof, but have wholly refuſed, and ſtill refuſe to render the ſame to them; Whereby the ſaid *J.* earl of *W.* who as well, &c. ſaith that he is injured, and hath damage to the value of 10*l.* And thereof as well for himſelf as the poor of the ſaid pariſh, he bringeth ſuit, &c.

And

And the said *E.* and *P.* by *S. E.* their attorney come and pray leave to imparle until the octave of St. *Hilary*; and they have it, &c. The same day is given to the said *J.* earl of *W.* here, &c. And now here at this day, *to wit*, on the octave of St. *Hilary* in the same term of St. *Hilary*, cometh as well the said earl, who as well, &c. as the said *E.* and *P.* by their attorney aforesaid. *And* the said *E.* and *P.* defend the force and injury when, &c. and say that they do not owe the said 40 *l.* as in and by the said declaration is above supposed; and hereupon they put themselves upon the country: *And* the said earl doth so likewise. *Therefore* the sheriff is commanded, &c.

Imparlance.

Plea, Nil debent.

Issue.

Kent, to wit, *E. L.* late of, &c. was summoned to answer to the poor of the parish of *E.* in the county aforesaid, and to Sir *J. S.* bart. who sueth in this particular as well for himself as for the said poor of the said parish of *E.* aforesaid, of a plea, that he render to the said poor and the said *J. S.* who sueth as aforesaid, 10 *l.* of lawful money of *Great Britain*, which he oweth to, and unjustly detaineth from, &c. *And* whereupon the said Sir *J.* who sues as aforesaid, by *H. C.* his attorney saith, *That* the said *E.* on the 30th day of *March* 1736, at and in the parish of *E.* aforesaid, did keep a certain greyhound for the destruction of the game of this kingdom, he the said *E.* then not being a person qualified by the laws of this realm to keep a greyhound for the destruction of the game, against the form of the statute in such

Declaration in debt on the statute, for keeping a greyhound and killing a hare, not being a person qualified.

Bluet v. Needs. Com. Rep. 522.

caſe made and provided: *Whereby* and by force of the ſtatute in ſuch caſe lately made and provided, an action hath accrued to the poor of the pariſh aforeſaid, and to the ſaid Sir *J.* who ſues as aforeſaid, to demand and have of the ſaid *E.* for his ſaid offence 5 *l.* parcel of the ſaid 10 *l.* *And* the ſaid Sir *J.* who ſueth as aforeſaid, further ſaith, *That* the ſaid *E.* on the ſaid 30th day of *March* in the year aforeſaid, in the ſaid pariſh of *H.* in the county aforeſaid, did with a certain greyhound kill one hare, he the ſaid *E.* then not being a perſon qualified to kill game, againſt the form of the ſtatute in ſuch caſe lately made and provided: *Whereby*, and by force of the ſtatute in ſuch caſe lately made and provided, an action hath accrued to the poor of the pariſh aforeſaid, and to the ſaid Sir *J.* who ſueth as aforeſaid, to demand and have of the ſaid *E.* for his ſaid laſt mentioned offence, 5 *l.* reſidue of the ſaid 10 *l.* *Yet* the ſaid *E.* (altho' often requeſted) hath not yet paid the ſaid 10 *l.* or any part thereof, to the ſaid poor and the ſaid Sir *J.* who ſueth as aforeſaid, or either of them; but he to pay the ſame to the ſaid poor and the ſaid Sir *J.* who ſueth as aforeſaid, hitherto wholly hath, and ſtill doth refuſe, to the ſaid Sir *J.* who ſueth as aforeſaid, his damage of 10 *l.* And thereof as well for the ſaid poor as for himſelf he bringeth ſuit, *&c.*

Second count.

Plea, Nil debet.

And the ſaid *E. L.* by *R. P.* his attorney cometh and defendeth the wrong and injury when, *&c.* and ſaith, that he doth not owe to

to the said Sir *J.* who sueth as well, *&c.* the said sum of 10 *l.* or any part thereof, in manner and form as the said Sir *J.* who sueth as well, *&c.* above thereof complaineth against him; and of this he putteth himself upon the country: *And* the said Sir *J.* who sueth as aforesaid, doth likewise the same. *Therefore*, &c.

Issue.

And the said Sir *J. S.* although solemnly called, came not, nor hath entered his said issue, nor hath further prosecuted his said writ: *Therefore* he and his pledges of prosecution are thereupon amerced, *&c.* And the names of the pledges of the said Sir *J.* are, *&c.* And that the said *E.* depart without day, *&c.* It is also considered, that the said *E.* do recover against the aforesaid Sir *J.* his damages by reason of the premisses, to 3 *l.* 16 *s.* 8 *d.* to the said *E.* by the discretion of the justices here adjudged at his request for his costs and charges in this behalf sustained, according to the form of the statute in such case made and provided.

Judgment for not entering the issue.

Middlesex, to wit, *J. L.* late of, *&c.* was summoned to answer *W. R.* who sueth as well for our lord the king as for himself in this behalf, in a plea, that he render to our said lord the king and the aforesaid *W.* the sum of 101 *l.* 11 *s.* of lawful money of *Great Britain*, which to them he oweth and unjustly detaineth, *&c.* *And* whereupon the said *W.* who sueth as well for our said lord the king as for himself, by *J. B.* his attorney complaineth, *That* the said *J. L.* after the 29th day of *September* in the year of our

Declaration in debt on the statute of usury. C. B.

Lord 1714, *to wit*, on the 22d day of *June* in the year of our Lord 1736, at the parish of *St. Martin in the Fields* in the county aforesaid, upon a certain contract made after the said 29th day of *September*, *to wit*, on the 22d day of *June* in the year of our Lord 1733, at the parish aforesaid in the county aforesaid, between the said *J.* and one *M. M.* took, accepted and received of and from the said *M.* the sum of 4 *l.* 14 *s.* 6 *d.* by way of corrupt bargain for giving day of payment to her the said *M.* from the said 22d day of *June* in the year of our Lord 1733, to the 22d day of *June* in the year of our Lord 1736, of the sum of 10 *l.* 10 *s.* lent on the 22d day of *June* in the year of our Lord 1733, at the parish aforesaid in the county aforesaid, by the said *J.* to the said *M.* Which said sum of 4 *l.* 14 *s.* 6 *d.* so took, accepted and received by the said *J.* of the said *M.* as aforesaid, is above the rate of 5 *l.* for the forbearing of 100 *l.* for one year, and is against the form of the statute in such case made and provided: *Whereby* an action hath accrued to the said *W.* who sueth as well for our lord the king as himself, to demand and have of and from the said *J.* the sum of 31 *l.* 10 *s.* part of the said 101 *l.* 11 *s.* being the treble value of the said sum of 10 *l.* 10 *s.* of the said *J.* by him lent to the said *M.* as aforesaid; [*other like counts for the remainder of the* 101 *l.* 11 *s.*]

Declaration in debt on a judgment.

London, to wit, *R. D.* late of *L.* carpenter, was summoned to answer *L. P.* of a plea, that he render to him 62 *l.* of lawful

money

money of *Great Britain*, which he oweth to and unjustly detaineth from him, *&c. And whereupon* the said *L.* by *J. C.* his attorney saith, that whereas the said *L.* heretofore, that is to say, in *Easter* term in the 4th year of the reign of his present majesty king *George* the second, in his majesty's court before Sir *R. E.* knt. and his brethren, then his majesty's justices of the common bench here at *W.* in the county of *M.* by the consideration of the said court recovered against the said *R.* 62*l.* which were adjudged to the said *L.* in the said court, for his damages which he had sustained, as well by occasion of the not performing certain promises and undertakings to the said *L.* by the said *R.* then lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the said *R.* is convicted, as by the record and proceedings thereof, now remaining in his majesty's said court here, may more fully and at large appear: *Which* said judgment still remaineth in its full strength, force and effect, not reversed, vacated, annulled, discharged or satisfied. *And* the said *L.* hath as yet obtained no satisfaction of the aforesaid judgment: *Whereby* an action hath accrued to the said *L.* to demand and have of the said *R.* the said 62*l.* *Yet* the said *R.* (although often requested) hath not yet rendered the said 62*l.* or any part thereof, to the said *L.* but to render the same to him hitherto hath, and still doth wholly deny, to the damage of the said *L.* of 20*l.* And thereof he bringeth suit, *&c.*

And

Plea, Nul tiel record.

And the ſaid *R.* by *W. W.* his attorney cometh and defendeth the force and injury when, &c. and ſaith that the ſaid *L.* ought not to have his ſaid action againſt him, becauſe he ſaith, that there is not any ſuch record of recovery of damages aforeſaid againſt him the ſaid *R.* in his ſaid majeſty's court before Sir *R. E.* knt. and his brethren, his majeſty's juſtices of the common bench, as the ſaid *L.* in his declaration hath alledged; and this he is ready to verify: Therefore he prayeth judgment, if the ſaid *L.* ought to have his ſaid action thereof againſt him, &c.

Replication, habetur tale recordum.

And the ſaid *L.* ſaith, that by any thing before alledged he ought not to be barred from having his aforeſaid action maintained againſt the ſaid *R.* becauſe he ſaith that there is ſuch a record of recovery againſt him the ſaid *R.* in his ſaid majeſty's court of common bench here remaining, as by the ſaid declaration is above alledged; and this he is ready to verify by the ſaid record: And he prayeth that the ſaid record may be inſpected and ſeen by the judges here, &c.

Day given to bring in the record.

And becauſe the ſaid *L.* hath not the ſaid record now ready here in court, it is ſaid by the ſaid court here to the ſaid *L.* that he have the record here on———: The ſame day is given to the ſaid *R.* here, &c.

Note; Upon bringing the record into court on the day given, the ſecondary draws up a rule of court for judgment *Niſi cauſa* within four days, and at the expiration of that time the ſecondary certifies at the foot of

of the rule that no cause hath been shewn; after which judgment may be signed.

Surrey, to wit, *J. M.* late, &c. was summoned to answer *H. G.* of a plea, that he render to him 99*s.* and 8*d.* which he oweth to and unjustly detaineth from him, &c. *And* thereupon the said *H.* by *T. C.* his attorney saith, *That whereas* the said *H.* (that is to say) at the court of the king's palace at *W.* held before the judges of the said court there (*to wit*) at *S.* in the county of *S.* aforesaid, within the jurisdiction of the said court, on *Friday* the 23d day of *January* in the 9th year of the reign of the present king, by consideration of the said court recovered against the said *J. M.* (by the name of *J. M.*) 99*s.* and 8 *d.* which were assessed to the said *H.* in the aforesaid court of the king's palace at *W.* held before the judges of the said, court here, for his damages which he had sustained, occasioned by the non-performance of several promises and undertakings of the said *J. M.* made to the said *H.* by him the said *J.* besides his costs and charges about his said suit in that behalf expended, by the said court there for increase adjudged, whereof the said *J.* is convicted; as by the record and proceedings in the same court of the king's palace at *W.* held before the judges of the said court there, *to wit*, at *S.* aforesaid, in the county of *S.* aforesaid, within the jurisdiction of the said court there remaining, may appear: Which said judgment still remaineth in the said court there in full force, not in the least satisfied, reversed

Declaration in debt on a judgment in the palace-court.

verfed or difcharged. *And* the faid *H. G.* hath not as yet fued out any execution upon that judgment: By which an action hath accrued to the faid *H.* to require and have of the aforefaid *J. M.* the aforefaid 99 *s.* and 8 *d.* *Neverthelefs*, &c.

Plea, *Nul tiel Record.*

Replication, *Habetur tale recordum.*

Certiorari to *the palace-court prayed and awarded.*

And hereupon the faid *H.* prayeth the king's writ to be directed to the judges of the court of the king's palace at *Weftminfter*, and to every of them, to certify to the juftices of the faid lord the king here, Whether there be fuch record of fuch recovery of 99 *s.* 8 *d.* againft the faid *J.* by the faid *H. G.* or not. And it is granted to him returnable here.——*At* which day here come as well the faid *H.* as the faid *J.* by their attornies aforefaid, and the faid judges of the faid court, namely, *William* duke of *Devonfhire*, fteward of the king's houfhold, Sir *P. M.* Knight Marfhal of the faid houfhold, and Sir *T. A.* Knight, fteward of the palace court aforefaid, fent to the juftices here the record aforefaid, whereof there is mention above made, between the parties aforefaid, and remaining before them, which faid writ and record remain filed amongft the records here without day, &c. *Whereupon* the faid *H.* prayeth judgment and his debt aforefaid, together with his damages, by reafon of detaining of the faid debt to be adjudged to him, &c.

Return.

Declaration in debt on a judgment of Non pros.

Middlefex, to wit, *A. B.* late, &c. was fummoned to anfwer *D. L.* in a plea, that he render

render to him 3 *l.* 3 *s.* which he oweth to and unjustly detaineth from him, *&c.* *And whereupon* the said *D. E.* by *W. R.* his attorney saith, *That whereas* he the said *D. E.* heretofore, *to wit*, in the term of the *Holy Trinity* in the 10th and 11th years of the reign of his present majesty king *George* the second, in his said majesty's court of *Common Bench* at *Westminster* before Sir *John Willes*, Knt. and his brethren, then his said majesty's justices of the said court here, *to wit*, at *Westminster* in the county aforesaid, by judgment of the same court recovered against the said *A. B.* 33 *l.* 4 *s.* which were adjudged to the said *D. E.* in the same court according to the form of the statute in such case made and provided for his costs and charges which he had sustained, for that the said *A. B.* did not prosecute his said majesty's writ in a certain plea of [*as the case is*] lately brought by the said *A. B.* against the said *D. E.* in the said court, whereof the said *A. B.* is convicted as by the record and proceedings thereof now remaining in his said majesty's court of *C. B.* at *Westminster* aforesaid doth plainly appear; which said judgment still remaineth in force and power, not reversed, annulled or satisfied. And the said *D. E.* hath not yet obtained execution of the said judgment. *Whereby* an action hath accrued to the said *D. E.* to demand and have of the said *A. B.* the said 33 *s.* 4 *d.* parcel of the said 3 *l.* 3 *s.* *And also whereas* the said *A. B.* on the 22d day of *July* in the year of our Lord 1737. at *W.* aforesaid, had borrowed

Debt on a mutuatus.

rowed of the ſaid *D. E.* 29*s.* 8*d.* remainder of the ſaid 3 *l.* 3*s.* to be paid to the ſaid *D. E.* when he the ſaid *A. B.* ſhould be afterwards thereunto requeſted. *Yet* the ſaid *A. B.* although often requeſted, hath not rendered to the ſaid *D. E.* the ſaid 3 *l.* 3 *s.* or any part thereof, but hath hitherto refuſed and ſtill doth refuſe to render the ſame to the ſaid *D. E.* whereby he ſaith, that he is injured and damnified to the value of 5 And thereof bringeth ſuit, &c.

Declaration in debt by an executor, on a judgment obtained by the teſtator.

Middleſex, *A. B.* late of, &c. was ſummoned to anſwer *C. D.* executor of the teſtament and laſt will of *E. F.* deceaſed, of a plea, that he render to him 100 *l.* of good and lawful money of *Great Britain*, which he unjuſtly detaineth from, &c. *And* thereupon the ſaid *C.* by *W. R.* his attorney ſaith, *That whereas* the ſaid *B.* in his life-time, *to wit*, in the term of St. *Michael* in the 6th year of the reign of the lord the now king, here at *W.* in the ſaid county, before Sir *R. E.* knt. and his brethren, then juſtices of our ſaid lord the king of the bench, the ſaid *E.* by the judgment of the ſaid court did recover againſt the ſaid *A.* a certain debt of 97 *l.* and 60 *s.* for his damages which he ſuſtained on account of the detaining of the ſaid debt, whereof he is convicted, as by the record thereof in the ſaid court now remaining plainly appeareth. *And* the ſaid *C.* averreth, that the ſaid 100 *l.* hath not been paid to the ſaid *E.* in his life-time, or to the ſaid *C.* ſince his death, or to either of them; and that no execution of the debt and

and damages aforeſaid, or any part thereof, hath yet been had or obtained: *By* reaſon whereof an action accrued to the ſaid *E.* in his life-time, and to the ſaid *C.* ſince his death, to demand and have of the ſaid *A.* the ſaid 100*l.* *Yet* the ſaid *A.* altho' often requeſted, hath not paid the ſaid 100*l.* to the ſaid *E.* in his life-time, or to the ſaid *C.* ſince the death of the ſaid *E.* or to either of them; but to pay the ſame to them hath hitherto refuſed, and to pay the ſame to the ſaid *C.* ſtill doth refuſe: Whereupon he is prejudiced, and hath damage to the value of 20*l.* And thereof he bringeth ſuit, &c. *With this*, that the ſaid *C.* will verify that the judgment aforeſaid, ſtill remaineth in its full ſtrength and power, in no ways reverſed, annulled or ſatisfied. *And* the ſaid *C.* bringeth here into court the letters teſtamentary of the ſaid *E.* whereby it plainly appeareth to the court here, that the ſaid *C.* is executor of that teſtament, and hath the adminiſtration thereof granted to him, &c.

Profert *of the letters teſtamentary.*

Middleſex, to wit, *R. M.* late of *B.* in the county of *Bucks*, eſq; was ſummoned to anſwer *J. F.* clerk, in a plea, that he render to him 302*l.* 13*s.* which he oweth to him and unjuſtly detaineth, &c. *And* whereupon the ſaid *J.* by *R. H.* his attorney ſaith, that whereas the ſaid *J.* heretofore, that is to ſay, in the term of *Eaſter* in the 11th year of the reign of the lady *Anne* late queen of *Great Britain*, &c. in the court of the ſaid lady the late queen, before the queen herſelf at *W.* by bill without the writ of the

Declaration in debt on a judgment obtained in the King's Bench.

said late queen, and by the judgment of the same court, recovered against the said *R. M.* by the name of, &c. 300*l.* of debt, and also 35*s.* for his damages which he sustained, as well by occasion of the detaining that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *R.* is convicted; as by the record and process thereupon, remaining in the court of our lord the present king, before the king himself at *W.* more fully appeareth: Which said judgment still remaineth in its full force and effect, no ways reversed, annulled, or in any manner satisfied; and the said *J.* hath not yet sued out execution of the said judgment against the said *R.* Whereby an action hath accrued to the said *J.* to demand and have of the said *R.* the said 300*l.* 13*s.* *Nevertheless* the said *R.* altho' often requested, &c. hath not yet rendered the said 302*l.* 13*s.* to the said *J.* but to render the same to him hath hitherto wholly refused, and still doth refuse: Whereupon the said *J.* saith that he is injured, and hath damage to the value of 20*l.* And thereof he bringeth suit, &c.

Declaration in debt on a mutuatu Mich. 10 W. 3. Roll 704

Cambridge, to wit, *T. A.* late of *H.* in the county aforesaid, the younger, gent. was summoned to answer *T. A.* the elder, esq; in a plea, that he render to him 2000*l.* which he oweth him and unjustly detaineth, &c. And whereupon the said *T. A.* the elder, by *R D* his attorney saith, *That whereas* the said *T. A.* the younger, on the 10th day of *June* in the 10th year of the reign of our

our lord the present king, at the town of *C.* in the county of *C.* borrowed of the said *T. A.* the elder the said 2000 *l.* to be paid to the said *T. A.* the elder when he should be thereunto requested: *Nevertheless* the said *T. A.* the younger, altho' often requested, hath not yet rendered the said 2000 *l.* to the said *T. A.* the elder, but the same hitherto to render to him hath refused, and still doth refuse: Whereupon he saith that he is injured, and hath damage to the value of 20 *l.* And thereof he bringeth suit, *&c.*

Judgment by Non sum informatus.

And the said *T. A.* the younger, by *J. R.* his attorney cometh and defendeth the force and injury when, *&c.* And the same attorney saith, that he is not informed by the said *T. A.* the younger of any answer to be given for the said *T. A.* the younger to the said *T. A.* the elder in the said plaint; and he saith nothing else thereupon: Whereby the said *T. A.* the elder remaineth against the said *T. A.* the younger thereupon undefended: *Therefore* it is considered that the said *T. A.* the elder recover against the said *T. A.* the younger his said debt, and his damages by occasion of the detaining of that debt to 40 *s.* to the said *T. A.* the elder, by his assent by the court here adjudged. *And* the said *T. A.* the younger in mercy *&c.* *Afterwards*, that is to say, on the 30th day of *May* in the 1st year of the reign of our sovereign lord *George* now king of *Great Britain*, *&c.* came here into court *N. W.* and *M.* his wife, executrix of the testament of the said *T. A.* the elder,

Signed 23 Dec. anno reg. W. 3. decimo.

Mercy.

Satisfaction acknowledged by baron and fem, executrix of the plaintiff.

elder, esq; by *B. B.* their attorney, and bring here into court the letters testamentary of the said *T.* by which it sufficiently appeareth to the court here, that the said *M.* is the executrix of the said testament, and hath the administration thereof, &c. And the said *N.* and *M.* by their said attorney, by special warrant to him in this behalf made, acknowledged, that they are satisfied for the said debt and damages; therefore he the said *T. A.* the younger is quit of the said debt and damages, &c.

Declaration in debt against baron and feme, administratrix on a judgment against the intestate, suggesting a devastavit. Vide 2 R. Raym. 1510. 3 D. A. 381. p. 6. 2 Vent. 84. 1 Sid. 228.

———, to wit, *A. B.* late of, &c. Esq; and *E.* his wife, administratrix of all and singular the goods and chattels, rights and credits, which were of *B. C.* at the time of his death, *who died intestate* lately called, &c. were summoned to answer *P. B.* of a plea, that they render to him 223 *l.* which they owe him and unjustly detain, &c. And whereupon the said *P.* by *L. R.* his attorney saith, that *whereas* the said *P.* lately in the court of our lord the king now here, to wit, in the term of St. *Michael* in the 20th year of the reign of &c. at *W.* in the county of *M.* by the consideration of the same court recovered against the said *B. C.* in his life-time, as well a certain debt of 220 *l.* as 60 *s.* which in the same court were adjudged to the said *P.* for his damages which he had by occasion of the detaining that debt whereof the said *B. C.* was convicted, as by the record and process thereupon remaining in the same court here more fully appeareth; which said judgment

judgment ſtill remaineth in full force and effect, no ways reverſed or annulled; and the ſaid *P.* hath not as yet ſued out execution againſt the ſaid *B C.* upon the ſaid judgment recovered in form aforeſaid. *And* the ſaid *P.* further ſaith, that divers goods and chattels which were of the ſaid *B. C.* at the time of his death, to the value of the debt and damages aforeſaid, at *W.* aforeſaid, have come to the hands of the ſaid *A.* and *E.* to be adminiſtred; and that the ſaid *A.* and *E.* afterwards, to wit, on the 20th day of *April* in the 30th year of the reign of *&c.* at *W.* waſted the ſaid goods and chattels, and diſpoſed of and converted the ſame to the proper uſe of the ſaid *A* the ſaid *P.* being no ways ſatisfied of his debt and damages aforeſaid. *Whereby* an action accrued to the ſaid *P.* to demand and have of the ſaid *A.* and *E.* the ſaid 223*l.* *Yet* the ſaid *A.* and *E.* altho' often requeſted, have not yet rendered, nor has either of them yet rendered the ſaid 223*l.* to the ſaid *P.* but have hitherto refuſed, and ſtill do refuſe, to render the ſame to him: Wherefore he ſaith he is injured, and hath damage to the value of 20*l.* And thereof he bringeth ſuit, *&c.*

Devaſtavit ſuggeſted.

Actio accrevit.

And the ſaid *A.* and *E* by *T. G.* their attorney come and defend the force and injury when, *&c.* and ſay that the ſaid *P.* ought not to have or maintain his ſaid action thereupon againſt them, becauſe they ſay that they the ſaid *A.* and *E.* have fully adminiſtred all the goods and chattels which

Plea, Plene adminiſtravit.

 were

were of the ſaid *B. C.* at the time of his death in their hands to be adminiſtred; and that they have not, nor on the day of ſuing out the original writ of the ſaid *P.* nor at any time afterwards, had any goods or chattels which were of the ſaid *B. C.* at the time of his death in their hands to be adminiſtred; *Without this*, that they the ſaid *A.* and *E.* have waſted thoſe goods and chattels, and diſpoſed of and converted the ſame to the proper uſe of the ſaid *A.* as the ſaid *P.* has by his ſaid declaration above ſuppoſed; and this they are ready to verify: Wherefore they pray judgment, if the ſaid *P.* ought to have and maintain his ſaid action thereupon againſt them.

Traverſe.

And the ſaid *P.* ſaith, that he by any thing by the ſaid *A.* and *E.* in pleading above alledged ought not to be barred from having his ſaid action thereupon againſt them, becauſe he ſaith, as before, that the ſaid *A.* and *E.* have waſted the goods and chattels which were of the ſaid *B. C.* at the time of his death, to the value of the ſaid debt and damages, and diſpoſed of and converted the ſame to the proper uſe of the ſaid *A.* as the ſaid *P.* hath above declared againſt them: And this he prayeth may be inquired of by the country.

Replication.

Declaration of a precedent term, in debt on a bond againſt the ad

Elſewhere, as it appears of the term of Eaſter, in the thirty-ſecond and thirty-third years of the reign of king *Charles* II on the forty-fifth roll, it is thus contained:

Here-

Hertfordshire, to wit, *R. B.* late of —— Gentleman, administrator of all and singular the goods and chattels, rights and credits, which were of *W. P.* deceased, otherwise lately called *W. P.* of *R.* in the county of *E.* yeoman, was summoned to answer *I. P.* of a plea, that he render to him 16 *l* of lawful money of *England*, which he unjustly detained from him; *for that*, to wit, that whereas the said *W.* in his life-time, to wit, on the 19th day of *May* in the 25th year of the reign of our sovereign lord *Charles* II. now king of *England*, &c. at *H.* in the county aforesaid, by his writing obligatory sealed with the seal of the said *W.* *And* to the court of our said lord the king now here shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said *J.* in the said 16 *l* to be paid to the said *J.* when he should be thereunto afterwards requested: *Yet* the said *W.* in his life-time, and the said *R.* after the death of the said *W.* although often requested, *&c.* have not paid, nor hath either of them paid the said 16 *l.* to the said *J.* but the said *W.* in his life-time, and the said *R.* after the death of the said *W.* intirely refused to pay him the same, and the said *R.* still refuseth to pay him the same, and unjustly detaineth, to the damage of the said *J.* of 10 *l.* And thereof he bringeth suit, *&c.*

ministrator of the obligor. 1 Vent. 354. Vide 2 R. Raym 1510. 3 D. A 381. p. 6. 2 Ven. 84. 1 Sid. 228. H. 32 & 33 Car. II. Rot. 45.

Profert.

And now at this day, to wit, on the octave of St. *Hilary* in this same term, to

Impairlance.

 which

which day the said *R.* had leave to imparl to the said original writ, and then to answer, *&c.* came as well the said *W.* by his said attorney, as the said *R. B* by *W. B.* his attorney, and the said *R.* defendeth the wrong and injury when, *&c.* and saith that the said *J. P.* ought not to have or maintain his said action thereupon against him; because he saith, that by a certain indenture made at *H.* in the county aforesaid, on the 12th day of *February* in the 28th year of the reign of our sovereign lord *Charles* the II. now king of *England*, &c between the said *R. B* by the name of *R. B.* of the city of *L.* pewterer, of the one part, and the said *W.* by the name of *W. P.* of *R.* in the county of *E.* yeoman, of the other part, *The* counterpart of which sealed with the seal of the said *W.* bearing date the same day and year, the said *R.* bringeth here into court, it is witnessed, that the said *R* for and in consideration of the yearly rent and covenants in the same reserved, and mentioned to be paid, done and performed, on the part and behalf of the said *P. W.* his executors, administrators and assigns, as in the same is expressed, and for other good considerations the said *R B.* thereunto moving, had demised, granted, and to farm let, and by the said indenture did demise, grant, and to farm let, to the said *W.* all that messuage or farm-house called *Hunter's farm*, otherwise *Hunter's hal*, situate and being in the parish of *Epping* in the county

Plea, in the state intended to defendant in 110l. for rent on a lease.

Profert in curia.

county of *Essex*, with all and singular the houses, out-houses, buildings, barns, stables, yards, orchards, and gardens thereunto belonging; Except and always reserved out of the said lease to the said *R.* his heirs and assigns, a room in the said messuage called the parlour, and also a room or chamber over the same, with free liberty of ingress, egress and regress, to and for him and them, his and their servants and assigns, into, out of and from the said rooms, at his and their free-will and pleasure, during the said term; and also except and always reserved to the said *R.* his heirs and assigns, all and all manner of woods, underwoods, timber-trees, and all other trees whatsoever, and the lops, tops and shreddings of them and every of them, and all hedge-rows standing, growing or being, or which at any time after during the said term by the said indenture granted should stand, grow or be in or upon the said demised premisses, or any part or parcel thereof, with free liberty of ingress, egress and regress, to and for the said *R.* his heirs and assigns, with servants, labourers, horses, carts and carriages, at times convenient in the year to fell, cut down, grub up, square and saw the same, at his and their free-will and pleasure, leaving and allowing wood and timber for botes and fire-wood: To have and to hold the said messuage or farm, lands and premisses, in the said indenture before mentioned to be demised and granted, with their

and every of their appurtenances, (except as before excepted) to the ſaid *W.* his executors, adminiſtrators and aſſigns, from the feaſt-day of the annunciation of the bleſſed virgin *Mary* then next enſuing the date of the ſaid indenture, unto the full end and term of ſeven years thence next enſuing, and fully to be complete and ended: Yielding and paying therefore yearly and every year, during the ſaid term, to the ſaid *R.* his heirs or aſſigns, the yearly rent or ſum of 44 *l.* of lawful money of *England*, at the two moſt uſual feaſts or days of payment in the year, *to wit*, at the feaſt of St. *Michael* the archangel, and the annunciation of the bleſſed virgin *Mary*, by equal portions; as by the ſaid indenture, among other things, more fully appeareth. By virtue of which ſaid leaſe the ſaid *W.* afterwards, *to wit*, on the morrow of the ſaid feaſt of the annunciation of the bleſſed virgin *Mary* next after the date of the ſaid indenture, entered into the ſaid demiſed premiſſes, with the appurtenances, and was poſſeſſed thereof, and had, held, occupied and enjoyed the ſaid demiſed premiſſes, from the ſaid feaſt of the annunciation of the bleſſed virgin *Mary* laſt mentioned, until and after the feaſt of St. *Michael* the archangel in the 30th year of the reign of our ſaid lord the preſent king; and afterwards, *to wit*, on the 23d day of *December* in the 30th year aforeſaid, being ſo poſſeſſed thereof, at *H.* aforeſaid in the

county

county aforesaid, died intestate: After whose death, *to wit*, on the last day of *February* in the 31st year of the reign of our said lord the present king, at *H.* aforesaid in the county aforesaid, administration of all and singular the goods and chattels, rights and credits, which were of the said *W.* was in due manner committed by *H.* by divine permission bishop of *London*, to the said *R.* And the said *R.* in fact saith, that at the said feast of St. *Michael* last mentioned, 110*l.* of rent for the said premisses were due and in arrear to the said *R.* and were unpaid at the time of the death of the said *W.* and that he the said *W.* upon the said feast of St. *Michael*, or at any time afterwards, did not pay the said 110*l.* or any part thereof, nor cause the same or any part thereof to be paid to the said *R.* *And* the said *R.* further saith, that the said *W. P.* in his life-time, *to wit*, on the 12th day of *February* in the 28th year of the reign of our said sovereign lord *Charles* II. now king of *England*, &c. at *H.* aforesaid in the county aforesaid, by his writing obligatory sealed with the seal of the said *W.* *Which* the said *R.* bringeth here into court, the date whereof is on the same day and year, became held and bound to the said *R.* in 100*l.* of lawful money of *England*, to be paid to the said *R.* when he should be thereunto afterwards requested. And that the said *R.* further saith, that as well the said 110*l.* for the rent aforesaid, as the said 110*l.* mentioned in the said writing

Intestate indebted to defendant on a bond in 100l.

Profert.

obli-

obligatory, at the time of the death of the said *W.* and after his death, were true and just debts, and truly and justly due to the said *R.* and then and still unpaid to the said *R.* *And* that divers goods and chattels which were of the said *W.* at the time of his death, to the value of 64*l.* 17*s.* and 6*d.* and no more, after the death of the said *W.* came to the hands of the said *R.* as administrator as aforesaid: *Which* said goods and chattels the said *R.* retaineth in his own hands, in satisfaction of the said debts due to the said *R.* by the said *W.* in his life-time, in form aforesaid. *And* the said *R.* further saith, that he hath fully administred all the goods and chattels which were of the said *W.* at the time of his death in the hands of the said *R.* to be administred; and that he hath no goods and chattels which were of the said *W.* at the time of his death in his hands to be administred, nor had on the day of exhibiting the said bill, nor at any time afterwards, except goods and chattels to the value aforesaid, which are not sufficient to satisfy the said debts, and which are bound and charged with the payment of the said several debts; and this he is ready to verify: Wherefore he prayeth judgment if the said *J.* ought to have or maintain his said action thereupon against him, &c. *With this*, that the said *R.* will verify that the said *W. P.* in the said indenture and writing obligatory named, and the said *W. P.* in the declaration of the said *J.* named, are one and the same person, and not other nor different.

Assets only to 64l. 17s. 6d.

Which defendant retains. See Andrews 305, 328.

Plene administravit.

W. P. *(the intestate) named in the indenture and bond, and* W. P. *named in the declaration, are the same person.*

And

And the said *J.* prayeth oyer of the said writing obligatory, and it is read to him; and he also prayeth oyer of the condition of the said writing obligatory, and it is read to him in these words, *to wit*, The condition of this obligation is such, that if the above-bounden *W. P.* his heirs, executors, administrators and assigns, do and shall from time to time, and at all times hereafter, well and truly pay, observe, perform, fulfil, hold and keep all and singular the covenants, grants, articles, provisoes, promises, conditions and agreements, which in his and their parts and behalf are and ought to be paid, observed, performed, fulfilled, held and kept, comprized, specified and declared, in and by one pair of indentures of lease bearing the date above written, made between the above-named *R. B* of the one part, and the said *W. P.* of the other part, and that in and by all other things, according to the tenor, effect and true meaning of the same indentures of lease; then this obligation shall be void, or else it shall stand in full force; Which being read and heard, the said *J* saith, that he by any thing by the said *R.* above by pleading alledged, ought not to be barred from having his said action thereupon against him; *Because protesting*, that the goods and chattels which were the goods and chattels of the said *W.* at the time of his death, and came to the hands of the said *R.* to be administred, were of greater value than the sum of 64 *l.* 17 *s.* and 6 *d.* *And also protesting*,

Replication, Oyer of the bond and condition.

Bond conditioned for performance of the covenants in the lease.

Protestando *that the assets are above the value of* 64 l. 17 s. 6 d.

And that defendant hath

assets sufficient, &c.

testing, that he the said *R.* had divers goods and chattels, which were the goods and chattels of the said *W.* at the time of his death, sufficient to satisfy the said *J.* his said debt, and also to satisfy the said *R.* as much money and more as was due to the said *R.* by the said *W.* in his life-time; *For plea*, the said *J.* saith, that the said indenture in the said plea above mentioned, is the same indenture which is mentioned in the condition of the said writing obligatory. *And* the said *J.* further saith, that the said *W.* at the time of his death was not indebted to the said *R.* for the said rent in the said plea of the said *R.* above mentioned, above the sum of 30 *l.* and this he is ready to verify: Wherefore he prayeth judgment, and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, *&c.*

Says the indenture mentioned in the plea, and in the condition of the bond, are the same; and that the intestate was not indebted to the defendant for rent in above 30l.

Demurrer.

And the said *R.* saith, that the said plea of the said *J.* above by replying pleaded, in manner and form aforesaid, and the matter therein contained, are not sufficient in law to maintain the said action of the said *J.* against the said *R.* To which the said *R.* hath no need, neither is he bound by the law of the land in any manner to answer; and this he is ready to verify: Wherefore for default of a sufficient replication in this behalf, the said *R.* as before prayeth judgment, and that the said *J.* may be barred from having his said action thereupon against the said *R.* *&c.* And for cause of demurrer

in

in law upon the ſaid plea, the ſaid *R.* according to the form of the ſtatute in ſuch caſe made and provided, declareth, and to the court here ſheweth theſe cauſes following, *to wit* that the ſaid plea is double and incertain, and for that the ſaid plea wanteth form, *&c.*

And the ſaid *J.* ſaith, that the ſaid plea of the ſaid *J.* above by replying pleaded in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law to maintain the ſaid action of the ſaid *J.* againſt the ſaid *R.* which ſaid plea, and the matter therein contained, the ſaid *J.* is ready to verify and prove as the court, *&c.* And becauſe the ſaid *R.* doth not anſwer the ſaid plea, nor hath as yet any ways denied it, the ſaid *J.* as before prayeth judgment, and his ſaid debt, together with his damages by occaſion of the detaining that debt to be adjudged to him, *&c.* *But* becauſe the court of our ſaid lord the preſent king here is not adviſed of giving their judgment of and upon the premiſſes, day is thereupon given to the ſaid parties before our lord the king at *W.* until *Wedneſday* next after fifteen days of *Eaſter*, to hear their judgment of and upon the premiſſes, for that the court of our ſaid lord the preſent king here is not yet, *&c.* At which day, before our ſaid lord the king at *W.* the ſaid parties came by their attornies aforeſaid. *But* becauſe the court of our ſaid lord the preſent king here is not yet adviſed of giving their judgment of and upon the premiſſes, day is therefore

Joinder.

Continuance by Cur. advifar. vult.

Continuance.

therefore given to the ſaid parties before our lord the king at *W.* until *Friday* next after the morrow of the *Holy Trinity*, to hear their judgment thereupon, for that the court of our ſaid lord the preſent king here is not yet, *&c.* At which day, before our lord the king at *W.* the ſaid parties come by their attornies aforeſaid. *But* becauſe the court of our ſaid lord the preſent king here is not yet adviſed of giving their judgment of and upon the premiſſes, day is therefore given to the ſaid parties, before our lord the king at *W.* until *Tueſday* next after three weeks of St. *Michael*, to hear their judgment thereupon, for that the court of our ſaid lord the preſent king here is not yet, *&c.* At which day, before our lord the king at *W.* the ſaid parties came by their attornies aforeſaid. *Whereupon* the court having ſeen and fully underſtood all and ſingular the premiſſes, and having maturely deliberated thereupon, for that it appeareth to the court of our ſaid lord the preſent king here, that the ſaid plea of the ſaid *J.* above by replying pleaded in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law for the ſaid *J.* to have and maintain his ſaid action againſt the ſaid *R.* It is conſidered, that the ſaid *J. P.* recover againſt the ſaid *R. B.* his ſaid debt, and alſo 6 *l.* 13 *s.* and 4 *d.* for his damages, which he hath ſuſtained as well by occaſion of detaining that debt, as for his coſts and charges by him expended about his ſuit in this behalf, adjudged to the ſaid *J.* by the court of our

Continuance.

Judgment for the plaintiff.

Pro miſ. 6 *l.* 13 *s. and* 4 *d.* 4 Nov. 1681.

our ſaid lord the preſent king here, with his aſſent, to be levied of the goods and chattels which were of the ſaid *W. P.* at the time of his death in the hands of the ſaid *R.* to be adminiſtred, if he hath ſo much in his hands, and if he hath not ſo much in his hands; then the ſaid damages to be levied of the proper goods and chattels of the ſaid *R.* And the ſaid *R.* in mercy, &c. *Afterwards to wit*, on *Monday* next after fifteen days of St. *Martin* in this ſame term, before our lord the king at *W.* the ſaid *J. P.* came by *J. L.* his attorney and acknowledged himſelf to be ſatisfied of the ſaid debt and damages: Therefore the ſaid *R.* is quit of the ſaid debt and damages, &c.

Satisfaction acknowledged.

London, to wit, *H. P.* clerk, and *M.* his wife, lately called *M. B.* complain of *P. L.* eſq; and *E.* his wife, executrix of the teſtament and laſt will of *A. C.* late father of the ſaid *E.* deceaſed, otherwiſe called, &c. in the cuſtody of the marſhal, &c. of a plea, that they render to them 200*l.* which they unjuſtly detain from them; *For that* to wit, that *whereas* the ſaid *A.* in his life-time, *to wit*, on the 1ſt day of *December* in the year of our Lord 1674. at *L.* aforeſaid, *to wit*, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, by his certain writing obligatory ſealed with the ſeal of the ſaid *A.* in his life-time, *And* to the court of our ſaid lady the queen now here ſhewn, the date whereof is on the ſame day and year, bound himſelf, his heirs, executors and adminiſtrators, in the penal ſum of 200*l.* of lawful money of

Declaration in debt by baron and feme against baron and feme executrix, on a bill made by the teſtator to the ſame while ſole, for the payment of 20l. per annum. See 2 Salk. 719.

Profert.

England,

England, to pay to the said *M.* (by the name of Mrs. *M. B.* daughter of *F. B.* of *L.* aforesaid, and of *M.* his wife) the sum of 20 *l.* a year, by equal portions, at or upon the four most usual feast-days in the year, *to wit*, on the nativity of our Saviour, the annunciation of the virgin *Mary*, the feast-day of St. *John* the baptist, and the feast of St. *Michael* the archangel, by 5 *l.* for every quarter of a year; the first payment to begin upon the feast of St. *John* the baptist next ensuing the date of the said writing; which said sum of 20 *l.* should be paid at the then dwelling-house of the said *F. B.* father of the said *M.* for the term of six years next ensuing the first payment, if the said *M.* the now plaintiff should live so long. *And* the said *H.* and *M.* in fact say, that 5 *l.* for one quarter of one year ended at the feast of St. *Michael* the archangel in the year of our Lord 1679. were due, in arrear and unpaid by the said *A.* in his life-time to the said *M.* the now plaintiff while she was sole, and still are due, in arrear and unpaid: *Whereby* an action accrued to the said *M.* while she was sole, to demand and have of the said *A. C.* in his life-time, and also to the said *H.* and *M.* after the marriage between them celebrated, to demand and have of the said *P.* and *E.* after the death of the said *A.* the said [illegible]. *Yet* the said *A.* in his life-time, and whilst the said *M.* was sole, altho' often requested, *&c.* thereunto by the said *M.* and the said *P.* and *E.* after the death of the said *A.* altho' often requested, *&c.* thereunto by the

One quarter due.

Actio accrevit.

said *M.* whilst she was sole, and by the said *H.* and *M.* after the marriage between them celebrated, have not paid, nor hath either of them paid the said 200*l.* to the said *M.* whilst she was sole, or to the said *H.* and *M.* or to either of them, after the marriage between them celebrated, but they intirely refused, and the said *P.* and *E.* still entirely refuse to pay them the same, to the damage of the said *H.* and *M.* of 40*l.* And thereof they bring suit, *&c.*

Declaration in debt on a bond against the heir and devisee of the obligor.

Cumberland, to wit, *R. W.* late of, *&c.* son and heir of *W. W.* deceased, otherwise called, *&c.* and *B. W.* late of the same, widow, devisee of the said *W.* of divers of his lands and tenements, were summoned to answer to *E. S.* esq; in a plea, that they render to the said *E.* 100*l.* which they owe to and unjustly detain from him, *&c.* *And* whereupon the said *E.* by *T. B.* his attorney saith, that *Whereas* the said *W.* the father of the said *R.* (of whom the said *R.* is son and heir, and the said *B.* is devisee as aforesaid) in his life-time, *to wit*, on the 2d day of *September* in the 6th year of the reign of his present majesty, at *W.* aforesaid, by a certain writing obligatory acknowledged himself to be bound to the said *E.* in 100*l.* to be paid to the said *E.* when he the said *W.* should be thereunto required; and the said *W.* did by the said writing obligatory bind himself and his heirs well and faithfully to make the said payment: *Neverthele∫s* the said *W.* in his life-time, or the said *R.* and *B.* (which

said R. is son and heir of the said W. and which said B. is devisee of the said W. of divers of his lands and tenements as aforesaid, by his last will made at W. aforesaid, after the 25th day of *March* in the year of our Lord 169?. whereof the said W. at the time of his decease had a power of disposing by his said last will) after the death of the said W. (altho' often requested) have not, nor hath any of them rendered to the said *E.* the said 100 *l.* or any part thereof; but they have wholly denied, and the said *R.* and *B.* still do deny to render the same to the said *E.* Whereby the said *E* saith that he is prejudiced and damnified to the value of 10*l.*

Profert. And thereof he bringeth suit, &c. *And* he bringeth here into court the said writing obligatory, which testifieth the debt aforesaid in form aforesaid, the date whereof is the day and year in that respect above-mentioned, &c.

Judgment by Nil dicit against the heir. *And* the aforesaid *R.* in his own proper person cometh and defendeth the force and injury when, &c. and saith nothing in bar or preclusion of the aforesaid action of the aforesaid *E.* whereby the said *E.* remaineth against the said *R.* thereof undefended: Therefore it is considered, that the said *E.* recover against the said *R.* his debt aforesaid, and his damages by reason of detaining that debt to 8 ?s. by the court here adjudged to the said *E.* by his assent, according to the form of the statute in such case made and provided. And the said *R.* in mercy, &c.

And

And the ſaid *B.* by ——— her attorney cometh and defendeth the force and injury when, *&c.* and ſaith that ſhe ought not to be charged with the ſaid debt by virtue of the ſaid writing obligatory, becauſe ſhe ſaith that ſhe is not deviſee of the ſaid *W.* of any of his lands and tenements, as by the ſaid declaration is above ſuppoſed: And of this ſhe putteth herſelf upon the country, *&c.*

Plea, not deviſee.

Of Eaſter *term in the ſixteenth year of the reign of king* George *the third.*

To the juſtices of our lord the king of the bench.

Middleſex, to wit, H. *B.* ſpinſter, by *J. S.* her attorney complaineth of *H. V.* eſq; otherwiſe called, *&c.* (he having privilege of parliament) of a plea, that he render to her [*as in a bill* * *againſt an attorney in debt on a bond to*] bringeth ſuit, *&c.* *And* hereupon the ſaid *H.* prayeth proceſs of the lord the king, according to the form of the ſtatute in ſuch caſe made and provided, to be made to her thereupon: And it is thereupon granted to her, *&c.* *And* ſhe bringeth here

Bill in debt on a bond againſt a member of parliament. Lil. Ent 501. 2 Ld. Raym. 1442. 2 Strange 734. *Proceſs prayed.* *Stat.* 8 & 9 W. 3. *Stat.* 12 & 13 W. 3. c. 3. Profert *of the bond.*

* It ſeems prudent to omit theſe words of courſe in ſuch bill, *viz.* " *But contriving and fraudulently intending craftily and ſubtilly to deceive and defraud.*"

into court the writing obligatory aforesaid, which testifieth the debt aforesaid in form aforesaid, the date whereof is the day and year aforesaid, &c.

Pledges of prosecuting { J. D. *and* R. R.

Writ of summons thereon. 1 Lil. Ent. 501. 602.

GEORGE the third, &c. To the sheriff of *M.* greeting. We command you, that you summon *H. V* esq; otherwise called, &c. (the said *H. V.* having privilege of parliament) that he be before our justices at *W.* on *Monday* next after the morrow of the Ascension of our Lord, to answer to *H. B.* spinster, of a plea that he render to her 80*l.* which he oweth to her and unjustly detaineth, &c. for that whereas [*drawn as in the bill to*] the damage of the said *H* of 20*l.* as it is said: And have you there this writ. Witness, &c.

Distringas thereon Lil. Ent. 569

GEORGE the third, &c. To the sheriff of *M.* greeting. We command you, that you distrain and attach *H. V* esq; otherwise called, &c. (the said *H. V.* having privilege of parliament) by all his lands and chattels in your bailiwic, so that neither he nor any one through him put his hands thereon until you shall have other command from us; and that of the issues thereof you answer to us, so that he be before our justices at *W.* on *Friday* next after the morrow of the *Holy Trinity*, to answer to *H. B.* spinster, of a plea that

that he render to her 840*l.* which he oweth to her, and unjustly detaineth from her, *&c.* For that whereas [*Verbatim as in the bill to*] damage of the said *H.* of 20*l.* as it is said, and to hear his judgment for many defaults: And have you there this writ. Witness, *&c.*

Elsewhere, as it appears of the term of the *Holy Trinity*, in the second year of the reign of king *James* II. on the 12th roll, it is thus contained: *Cheshire*, to wit, *T. H.* and *T. H.* are executors of the testament and last will of *E. H.* deceased, lately called *E. H.* of the town aforesaid, in the county of *C.* tanner, was summoned to answer *G. J.* of a plea that they render to him 40*l.* of lawful money of *England*, which they owe him and unjustly detain; *For that*, that is to say, that whereas the said *E.* in his life-time, that is to say, on the 11th day of *December* in the 34th year of the reign of the lord *Charles* II late king of *England*, *&c.* at *T.* in the county aforesaid, by his certain writing obligatory sealed with the seal of the said *E.* in his life-time, and to the court of our said lord the now king here shewn, the date whereof is on the same day and year, acknowledged him to be held and firmly bound to the said *G* in the said 40*l.* to be paid to the said *G.* when he should be thereunto requested: *Nevertheless* the said *E.* in his life-time, and the said *T.* and *T.* after the death of the said *E.* altho' often requested, *&c.* have not paid the said 40*l.* to the said

Declaration of a creditor in debt on a bond against the executors of the obligor. See Carth. 11. 3 Mod. 114.

Profert.

 G.

G. but hitherto to pay him the same have intirely refused, and the said *T* and *T.* still wholly refuse to pay him the same, and unjustly detain, to the damage of the said *C.* of 100 *s.* And thereof he bringeth suit, *&c.*

Imparlance.

And now at this day, that is to say, on the morrow of the *Holy Trinity* in this same term, to which day the said *T.* and *T.* had leave to imparle, and then to answer before our lord the king at *W.* come as well the said *G.* by his attorney aforesaid, as the said *T.* and *T.* by *M. J.* their attorney; *And* the said *T.* and *T.* defend the wrong and injury when, *&c.* and say, that the said *G.* ought not to have or maintain his said action thereof against them, because they say, that they the said *T.* and *T.* before the day of issuing the said original writ, had fully administred all the goods and chattels which were of the said *E. H.* at the time of his death; and that they have no goods and chattels which were of the said *E. H.* at the time of his death in their hands to be administred, nor had they on the day of issuing the said original writ, nor at any time afterwards; and this they are ready to verify: Wherefore they pray judgment, if the said *G.* ought to have or maintain his said action thereof against them, *&c.*

Plea, Plene administravit.

Replication.

And the said *G.* saith, that he by any thing by the said *T.* and *T.* above in pleading alledged, ought not to be precluded from his said action thereof against the said *T.* and *T.* because he saith that the said *T.* and *T.* have

have, and on the day of issuing the said original writ, that is to say, on the 21st day of *April* in the 2d year of the reign of our lord *James* II. now king of *England*, &c. had divers goods and chattels which were of the said *E. H.* at the time of his death in their hands to be administred, to the value of the debt aforesaid, whereof they could have satisfied the said *G.* for his debt aforesaid, *to wit*, at *T.* in the county aforesaid; and he prayeth that this may be inquired of by the country: *And* the said *T.* and *T.* do the like, *&c.* *And* because the said issue above joined between the said parties ought to be tried by men of the county palatine of *C.* that is to say, by men of the neighbourhood of *T.* aforesaid in the said county of *C.* where the writ of our lord the king runneth not, and not elsewhere; therefore the record of the said plaint is sent to the justices of the said lord the king of the said county of *C.* so that the said justices, by writ of our said lord the king of that county to be duly made, cause it to be commanded to the sheriff of the same county, that he cause to come before the said justices of our said lord the king of the said county of *C.* at the next sessions for the said county after the said record shall be delivered to them, twelve free and lawful men of the neighbourhood of *T.* aforesaid in the said county of *C.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Because as well, *&c.* when the verification and issue aforesaid shall be made and tried,

Issue.

Mittimus *to the county palatine.*

 that

that then the ſaid juſtices ſend to our lord the king at *W.* the record of the ſaid plaint, with the whole thereof which ſhall be done thereupon in the court of our ſaid lord the king there before them, at a certain day which the ſaid juſtices of the county palatine aforeſaid in the ſame court there ſhall prefix to the ſaid parties, to hear judgment thereupon, *&c.* And it is told to the ſaid *G.* that he ſue with effect at his peril, *&c.*

Declaration in debt on a bail-bond.

Middleſex, to wit, *C. B.* late of the *Inner Temple*, *London*, gent. otherwiſe called *C. B.* of the *Inner Temple*, *London*, gent. was ſummoned to anſwer *A. C.* aſſignee of Sir *R. H.* knt. and *E. B.* eſq; late ſheriff of the ſaid county of *M.* according to the form of the ſtatute in ſuch caſe lately made and provided, of a plea that he render to her 20 *l.* which he oweth her and unjuſtly detaineth, *&c.* *And* whereupon the ſaid *A. C.* by *J. B.* her attorney ſaith, that *whereas* one *W. L.* after the firſt day of the term of the *Holy Trinity* in the year of our Lord 1706, *to wit*, on the 4th day of *April* in the 10th year of the reign of our lord the preſent king, at *W.* in the ſaid county of *M.* was in due manner arreſted by the ſaid Sir *R. H.* and *E. B.* (being ſheriff of the ſaid county of *M.*) by virtue of a certain writ of our lord the preſent king of *Capias ad reſpondendum*, directed to the ſheriff of the county of *M.* and out of the court of our ſaid lord the preſent king (the ſame being then here, *to wit*, at

See Stra. 60. 444, 643. 2 Stra. 727, 893.

at *Westminster* in the county of *M.)* before that time in due manner iſſued, and returnable here from the day of *Eaſter* in fifteen days then next enſuing, at the ſuit of the ſaid *A. C.* of a plea of treſpaſs, and alſo in a certain plea of debt upon demand 10*l.* *And whereas* the ſaid Sir *R. H.* and *E. B.* (being ſheriff of the county of *M.* aforeſaid) took bail from the ſaid *W. L.* of and upon the ſaid arreſt for his appearance, according to the tenor of the ſaid writ, *to wit*, the ſaid *W. L.* one *W. B.* and the ſaid *C. B.* (as bail for the ſaid *W. L.*) on the ſaid 4th day of *April* in the ſaid 10th year of the reign of our ſaid lord the preſent king, at *W.* aforeſaid, by their certain writing obligatory *jointly and ſeverally* allowed themſelves to be held and firmly bound to the ſaid Sir *R. H.* and *E. B.* (being ſheriff of the ſaid county of *M.)* by the name of Sir *R. H.* and *E. B.* ſheriff of the ſaid county of *M.* in the ſaid 20*l.* to be paid to the ſaid ſheriff or his aſſigns, when they the ſaid *W. L. W. B.* and *C. B.* or either of them, ſhould be thereunto requeſted, with a condition to the ſaid writing obligatory underwritten, that if he the ſaid *W. L.* ſhould appear before the juſtices of our ſaid lord the king at *W.* from the day of *Eaſter* in fifteen days, to anſwer to the ſaid *A. C.* of a plea of treſpaſs, and alſo in a certain plea of debt upon demand 10*l.* that then the ſaid obligation ſhould be void and of no force, otherwiſe it ſhould ſtand and remain in its full ſtrength, force and

and effect, as by the ſaid writing obligatory, and the condition thereof (relation being thereunto had) may more fully appear. *And* the ſaid *A. C.* in fact ſaith, that the ſaid *W. L.* did not appear before the juſtices of our ſaid lord the preſent king here, *to wit*, at *W* aforeſaid, from the day of *Eaſter* in fifteen days, in the ſaid condition mentioned, according to the form and effect of that condition, by reaſon whereof the ſaid writing obligatory became forſeited. *And* the ſaid *A. C.* in fact ſaith, that afterwards, *to wit*, on the 19th day of *May* in the year of our Lord 1774, at *W.* aforeſaid, the ſaid Sir *R. H.* and *E. B.* (being ſheriff of the ſaid county of *M.)* by the name of Sir *R H.* knt. and *E. B.* eſq; ſheriff of the county of *M.* within named, at the requeſt of the ſaid *A. C.* the plaintiff in that ſuit, by his indorſement in due manner aſſigned the ſaid writing obligatory to the ſaid *A. C.* according to the form of the ſtatute in ſuch caſe made and provided, by then and there indorſing the ſaid writing obligatory, and atteſting the ſame under his hand and the ſeal of his office of ſheriff of the county of *M.* aforeſaid, in the preſence of two credible witneſſes, *to wit*, of *C. T.* and *J. C.* according to the form of the ſaid ſtatute, the ſaid 20*l.* in the ſaid writing obligatory contained then and there being unpaid, whereof the ſaid *C. B.* then and there had notice; whereby and by force of the premiſſes, and alſo by force of the ſaid ſtatute, an action accrued to the ſaid *A. C.*

C. as assignee of the said Sir *R. H.* and *E. B.* sheriff of the said county of *M.* to demand and have of the said *C. B.* the said 20*l.* Yet the said *C. B.* altho' often required, hath not yet rendered the said 20*l.* to the said Sir *R. H.* and *E. B.* or to the said *A. C.* or either of them, but hath hitherto altogether refused to render the same to them or to either, and yet doth refuse to render the same to the said *A. C.* and the said 20*l.* still remain unpaid: Wherefore she saith she is the worse, and hath damage to the value of 10*l.* And thereof she bringeth suit, &c. *And* she bringeth here into court as well the said writing obligatory which testifieth the said debt in form aforesaid, the date whereof is the 4th day of *April* in the said 10th year of the reign of our said lord the present king, as the said indorsed writing thereupon, the date whereof is the said 19th day of *May* in the year of our Lord 1774. aforesaid, whereby the said *A. C.* sufficiently appeareth to the court here to be assignee of the said sheriff of the debt and writing obligatory aforesaid, and thereof to have her said action, &c.

Profert.

Elsewhere, as it appears of the term of the *Holy Trinity*, in the 13th year of the reign of king *George* III. on the roll, it is thus contained: *Sussex*, to wit, *E. A.* late of widow, administratrix of all and singular the goods and chattels, rights and credits, which were of *J. A.* gent. deceased, who died intestate, lately called *J. A.* of *R.* otherwise *E.* in the county aforesaid,

Declaration of a precedent term in debt for rent, upon articles against an administratrix. Salk. 325. Carth. 511. 12 Mod. 288. Vide 2 R. Raym. 1510.

3 D. A. 381. p. 6. 2 Vent. 84. 1 Sid. 228.

ſaid, was ſummoned to anſwer *H. G.* eſq; of a plea, that ſhe render to him 60 *l.* of lawful money of *Great-Britain*, which ſhe unjuſtly detaineth from him; *For that*, to wit, that *whereas* by a certain writing of articles made at *H.* in the county aforeſaid, on the 11th day of *January* in the year of our Lord 1761, between the ſaid *H.* by the name of *H. G.* of *B.* within the pariſh of *E. G.* in the county of *S.* eſq; of the one part, and the ſaid *J.* by the name of *J. A.* of *R.* otherwiſe *E* in the county aforeſaid, gent. of the other part; *The* counterpart whereof, ſealed with the ſeal of the ſaid *J.* the ſaid *H.* bringeth here into court, bearing date the ſame day and year, the ſaid *H.* demiſed to the ſaid *J. A.* all thoſe two ſeveral pieces or parcels of land called the *Deans*, containing by eſtimation 22 acres, with the appurtenances, in *H.* aforeſaid in the county aforeſaid; and alſo all thoſe four pieces of marſh-land called *H marſh*, containing by eſtimation 32 acres, with the appurtenances, in *H.* aforeſaid: *To hold* to the ſaid *J. A.* his executors and adminiſtrators, from the feaſt of the birth of our Lord then laſt paſt for eleven years, *At* and under the yearly rent of 30 *l.* To be paid half-yearly during the ſaid term, *to wit*, at the feaſts of St. *John* the baptiſt, and the birth of our Lord, by equal portions, or within one and twenty days after the ſaid feaſts, as by the ſaid writing more fully appeareth. *By virtue* of which ſaid demiſe the ſaid *J. A.* entered into the ſaid premiſſes,

Profert.

Habendum.

Reddendum.

Teſtator entered.

with the appurtenances, and was possessed thereof until and on the feast of the birth of our Lord in the year of our Lord 1776, and by 21 days thence next ensuing. *And* 60 *l.* of the said rent for two years ended at the said feast of the birth of our Lord in the year 1775, and by 21 days thence next ensuing, were in arrear in the life of the said *J.* and are still unpaid: *Whereby* an action accrued to the said *H.* to demand and have of the said *J.* in his life-time, and of the said *E.* after the death of the said *J.* (*To which* said *E.* administration of all and singular the goods and chattels, rights and credits, which were of the said *J.* at the time of his death, after his death was committed at *H.* aforesaid in the county aforesaid) the said 60 *l.* *Yet* the said *J.* in his life-time, and the said *E.* after his death, altho' often requested, &c. have not yet paid the said 60 *l.* to the said *H.* but they have hitherto intirely refused, and the said *E.* still refuseth to pay him the same, to the damage of the said *H.* of 20 *l.* And thereof he bringeth suit, &c.

Rent accrued.

Actio accrevit.

Administration committed to defendant.

And now at this day, *to wit*, on the octave of St. *Hilary* in this same term, until which day the said *E.* had licence to imparl to the said original bill, and then to answer, &c. come as well the said *H. G.* by his said attorney, as the said *E.* by *J. L.* her attorney; *And* the said *E.* defendeth the force and injury when, &c. *And as to* 30 *l.* parcel of the said 60 *l.* in the said declaration mentioned

Imparlance.

As to part, Non detinet,

tioned to be in arrear, of the faid rent for the firft year of the faid two years, the faid *E.* faith that fhe doth not detain from the faid *H.* the faid 30 *l.* nor any parcel thereof, in manner and form as the faid *H.* above complaineth againft her; and of this fhe putteth herfelf upon the country: *And* the faid *H.* doth fo likewife, &c. *And* as to the other 30 *l.* refidue of the faid 60 *l.* the faid *E.* faith, that the faid *H. G.* ought not to have or maintain his faid action thereupon againft her, becaufe fhe faith, that in the life-time of the faid *J.* and whilft fhe the faid *E.* was fole, *to wit*, on the 20th *January* in the year of our Lord 1758. at *H.* aforefaid in the county aforefaid, he the faid *J. A.* by the name of *J. A.* of *R.* in the county of *S.* gent. by his certain writing obligatory fealed with the feal of the faid *J.* *And* to the court of our faid lord the king now here fhewn, bearing date the faid 20th day of *January* in the year of our Lord 1758 aforefaid, acknowledged himfelf to be held and firmly bound to the faid *E.* whilft fhe was fole, then by the name of *E. R.* of *R.* in the county aforefaid, fpinfter, in 2000 *l.* of lawful money of *Great Britain*, to be paid to the faid *E.* when he fhould be afterwards thereunto required, with a condition to the faid writing obligatory underwritten, reciting, that whereas a marriage was by the bleffing of God in a fhort time to be folemnized between the faid *J. A.* and her the faid *E.* fo that if the faid *E.* fhould furvive the faid *J.* and that the faid

Iffue.

As to the refidue, a bond entered into by the inteftate to the defendant before their marriage to leave her 1000 l. *at his death.*

Profert.

J. ſhould die before the ſaid *E.* then if the ſaid *J. A.* ſhould leave, or if his heirs, executors or aſſigns ſhould well and truly pay, or cauſe to be paid to the ſaid *E.* her executors, adminiſtrators or aſſigns, the full and intire ſum of 1000 *l.* of lawful money of *Great Britain*, within one month after the death of the ſaid *J. A.* without fraud or deceit, that then the ſaid obligation ſhould be void, otherwiſe to ſtand and remain in its full force and virtue; as by the ſaid writing obligatory, and the condition of the ſame writing obligatory, brought here into court, more fully appeareth. *And* the ſaid *E.* further ſaith, that afterwards, *to wit*, on the 1ſt day of *March* in the ſaid year of our Lord 1758, at *H.* aforeſaid in the county aforeſaid, ſhe the ſaid *E.* married with the ſaid *J. A.* And afterwards, and before the day of ſuing out the writ of the ſaid *H. to wit*, on the 1ſt day of *March* in the year of our Lord 1775, the ſaid *J. A.* died inteſtate at *H.* aforeſaid in the county aforeſaid, and did not leave to the ſaid *E.* the ſum of 1000 *l.* nor any part thereof; and that at any time after the death of the ſaid *J. A.* hitherto the ſum of 1000 *l.* or any part thereof, hath not been paid by the heirs or aſſigns of the ſaid *J A.* or any of them. *And* the ſaid *E.* further ſaith, that after the death of the ſaid *J. to wit*, on the 13th day of *March* in the year of our Lord 1775, at *H.* aforeſaid in the county aforeſaid, adminiſtration of all and ſingular the goods and chattels, rights and credits, which

Defendant and inteſtate intermarried.

He died,

and did not leave her 1000l.

Adminiſtration granted to defendant.

which were of the said *J. A.* at the time of his death, who died intestate, was in due form of law committed to the said *E.* by *T. B.* doctor of laws, commissary or principal official lawfully appointed of the reverend father in God *John* by divine permission lord bishop of *Chichester*, and for the whole archdeaconry of *L.* in the diocess of *C.* aforesaid, to whom the committing the said administration of right belonged. *After* the committing which said administration, divers goods and chattels which were of the said *J.* at the time of his death, to the value of 230 *l.* and not more, came to the hands of the said *E.* by virtue of the said administration, *to wit*, at *H.* aforesaid in the county aforesaid: *Which* said goods and chattels the said *E.* retaineth in her hands, in part of satisfaction of the said writing obligatory. *And* the said *E.* further saith, that on the day of suing out the said writ of the said *H.* or before that time, or at any time afterwards, there did not come to the hands of the said *E.* any other or more goods and chattels which were of the said *J.* at the time of his death, besides the said goods and chattels to the value of the said 230 *l.* and not more, and which are not sufficient to satisfy to the said *E.* the said sum of 1000 *l.* mentioned in the condition of the said writing obligatory; and this she is ready to verify: Wherefore she prayeth judgment if the said *H.* ought to have or maintain his said action thereupon against her, *&c.* *With this*, that the said *E.* will verify that the said writ-

Pract. Reg. 37, 43.

Assets to 230l.

Which she retains.

No other assets.

Bond in force.

ing

ing obligatory ſtill remaineth in its full force and effect, no ways annihilated or ſatisfied. And that the ſaid *J. A.* in the ſaid writing obligatory mentioned, and *J. A.* in the ſaid declaration and plea mentioned, are one and the ſame perſon, and not other nor different.

Obligor and inteſtate the ſame perſon.

Geo. Hill.

And the ſaid *H. G.* ſaith, that he by any thing by the ſaid *E.* above in pleading alledged, ought not to be barred from having his ſaid action thereupon againſt her the ſaid *E.* becauſe he ſaith that the ſaid plea above pleaded by the ſaid *E.* in manner and form aforeſaid, and the matter therein contained, are not ſufficient in law to bar the ſaid *H.* from having his ſaid action thereupon againſt the ſaid *E.* To which ſaid plea he the ſaid *H.* hath no need, and is not bound by the law of the land in any manner to anſwer; and this he is ready to verify: Wherefore, for default of a ſufficient anſwer in this behalf, the ſaid *H.* prayeth judgment and his ſaid debt, together with his damages by the occaſion of detaining that debt, to be adjudged to him, &c.

Demurrer.

And the ſaid *E.* ſaith, that the ſaid plea above pleaded by the ſaid *E.* in manner and form aforeſaid, and the matter therein contained, are good and ſufficient in law to bar the ſaid *H.* from having his ſaid action thereupon againſt her the ſaid *E.* which ſaid plea, and the matter therein contained, the ſaid *E.*

Joinder.

is ready to verify and prove as the court, &c. And because the said *H.* doth not answer to the said plea, nor has as yet in any manner denied the same, she the said *E.* as before prays judgment, and that the said *H.* may be barred from having his said action thereupon against her, &c. *But* because the court of our said lord the king now here is not advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *W.* until fifteen days of *Easter*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof. *At which day* before our lord the king at *W.* the said parties came by their attornies aforesaid. *But* because the court of our said lord the king now here is not advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *W.* until the morrow of the *Holy Trinity*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not advised thereof. *At which day* before our lord the king at *W.* the said parties came by their attornies aforesaid. *But* because, &c. [like continuances to *Michaelmas*, *Hilary*, *Easter*, *Trinity* and *Hilary Terms.*] *At which day* before our lord the king at *W.* the said parties come by their attornies aforesaid. *Whereupon* the court of our said lord the king now

Continuance.

Continuance.

Continuance.

Judgment for the defendant.

[Now] here having seen and fully understood all and singular the premisses, and having maturely deliberated thereupon, it appeared to the court of our said lord the king now here, that the said plea above pleaded by the said *E.* in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to bar the said *H.* from having his said action against the said *E.* *Therefore it is considered*, that the said *H. G.* take nothing by his said writ, but that he be in the mercy of the court for his false clamour, &c. and that the said *E.* go thereof without day, &c. And it is further considered, that the said *E. A.* recover against the said *H. G.* 14 *l.* 10 *s.* for her costs and charges laid out by her about her defence in this behalf, adjudged to the said *E.* by the court of our said lord the king now here, by her assent, according to the form of the statute in such case made and provided; and that the said *E. A.* have execution thereof, &c.

Judgment signed, 21 Feb. 1778.

Adjudged in this case, that the debt was only suspended, and not extinguished.

Middlesex, to wit, *F. O.* widow, complaineth of *T. O.* esq; and *H. H.* clerk, in the custody of the marshal, &c. of a plea that they render to her 84 *l.* of lawful money of *England*, which they owe her and unjustly detain, *for that*, to wit, that *whereas* by a certain indenture made at the parish of *St. Clement Danes* in the said county of *M.* on the 26th day of *February* in the year of our

Declaration in debt for rent upon a lease of a rectory, tithes, &c.

 Lord

Lord 1682. between the faid *F. O.* widow, and relict of *G. O.* doctor of divinity, and late prebendary of the prebend of *L.* founded in the cathedral church of *L.* in the county of *S.* deceafed, *M. O.* fpinfter, daughter of the faid *G.* and *F. O. H. H.* of *R.* in the county of *W.* efq; and *J. O.* of the *Middle Temple*, *London*, efq; of the one part, and the faid *T. O.* by the name of *T. O.* of *H.* in the faid parifh of *L.* efq; and the faid *H. H.* by the name of *H. H.* vicar of *L.* aforefaid, and prebendary of *L.* aforefaid, of the other part; *one* part of which faid indenture, fealed with the feals of the faid *T.* and *H.* the faid *F.* bringeth here into court, the date whereof is on the fame day and year aforefaid; the faid *F. M. H.* and *J.* for and in confideration of the rents and covenants expreffed in the faid indenture on the part of the faid *T.* and *H.* to be performed, by the faid indenture demifed and to farm let to the faid *T. O.* and *H. H.* all that prebend, rectory or parfonage of *L.* aforefaid, with all the tithes of corn and hay growing and renewing, or which at any time during the term by the faid indenture demifed fhould grow, arife and renew upon the fame, fituate, lying and being in the faid county of *S.* and the faid city and county of *L.* together with all rights, members, penfions, portions, profits, commodities and appurtenances, to the faid prebend belonging or in any manner appertaining, together with all and all manner of houfes, edifices and ftructures, yards, gardens,

Profert.

mens, glebe lands, meadows, pastures, commons, chief-rents, reversions, services, tithes, tithings, fruits, oblations, obventions, emoluments, and all rights, properties, advantages and hereditaments whatsoever, to the said prebend belonging or appertaining (except the presentation and advowson of and to the vicarage of *L.* aforesaid, when and as often as the same should become vacant during the term in the said indenture granted ; *To have* and to hold, perceive receive and enjoy all the said prebend, rectory and parsonage, glebe lands, houses, meadows, pastures, commons, tithes, tithings, fruits, oblations, obventions, and all other the premisses whatsoever by the said indenture demised, with the appurtenances, (except before excepted) to the said *T. O.* and *H. H.* their executors, administrators and assigns, from the 30th day of *September* then last past before the date of the said indenture, for, during, and unto the full end and term of twenty years and the half of a year and five months thence next ensuing, and fully to be complete and ended : *Yielding* and paying therefore yearly and every year, during the first twenty years and the half of a year of the said term, to the said *F. O.* her executors, administrators and assigns, the sum or yearly rent of 42 *l.* of lawful money of *England*, at the feasts of the annunciation of the blessed virgin *Mary* and St. *Michael* the archangel, by even and equal portions ; the first payment to begin at the feast day of the annun-

Habendum.

Reddendum.

annunciation of the bleſſed virgin *Mary* next enſuing the date of the ſaid indenture: *And alſo yielding* and paying to the ſaid *F. O.* his executors, adminiſtrators and aſſigns, for the laſt five months of the ſaid term, the ſum or rent of 21 *l.* of like lawful money of *England*, upon the laſt day of the ſaid term, without any deduction, defalcation or abatement to be made of any rent or rents of 16*l.* 13 *s.* and 4 *d.* payable yearly to the prebendary of *L.* aforeſaid, or the penſion or penſions of 30 *l.* payable yearly to the vicar choral ſtall of the ſaid prebend, or the maſter of the works of the ſaid cathedral church, or the yearly penſion of 5 *l* 6 *s.* and 8 *d.* to the vicarage of *St. Mary* in *L.* or the penſion or yearly rent of 8 *s.* to the divinity-reader in the ſaid cathedral-church for the time being, or for tenths due to his majeſty or his ſucceſſors for the ſaid prebend, or for any other ſums of money due or to be due for procurations, ſynodals, or any other charges ordinary or extraordinary, which ſhould be due or become due and iſſuing therefrom, or for repairs, or any other taxes, charges, aſſeſſments or incumbrances whatſoever, as by the ſaid indenture amongſt other things more fully appeareth. *By virtue* of which ſaid demiſe the ſaid *T. O.* and *H. H.* afterwards, *to wit*, on the 10th day of *March* in the year of our Lord 1682. entered into the ſaid demiſed premiſſes, with the appurtenances, and were and ſtill are poſſeſſed thereof. *And* 84 *l.* of the ſaid rent for the ſaid premiſſes, for

Defendants entered.

Rent arrear.

for two years ended at the feaſt of the annunciation of the bleſſed virgin *Mary* laſt paſt, were in arrear to the ſaid *F.* and ſtill are in arrear and unpaid. *Whereby* an action accrued to the ſaid *F.* to demand and have of the ſaid *T. O.* and *H. H.* the ſaid 84*l.* *Yet* the ſaid *T. O.* and *H.* altho' often requeſted, &c. have not, nor hath either of them yet paid the ſaid 84*l.* to the ſaid *F.* but have hitherto intirely refuſed, and ſtill do refuſe to pay her the ſame, to the damage of the ſaid *F.* of 100*l.* And thereof ſhe bringeth ſuit, &c.

Actio accrevit.

And the ſaid *T. O.* and *H. H.* by ——— their attorney come and defend the force and injury when, &c. and ſay, that the ſaid *F. O.* the preſent plaintiff, ought not to have or maintain her ſaid action thereupon againſt them, becauſe they ſay, that after the ſaid demiſe of the ſaid premiſſes above ſpecified in the ſaid declaration, and before any rent became due and payable by the ſaid demiſe to the ſaid *F. O.* the preſent plaintiff, *to wit*, on the 20th day of *March* in the year of our Lord 1682. aforeſaid, ſhe the ſaid *F. O.* the preſent plaintiff, with force and arms, &c. entered into a certain chamber called the great parlour, parcel of the parſonage-houſe parcel of the ſaid premiſſes, with the appurtenances, to the ſaid *T. O.* and *H. H.* in form aforeſaid above demiſed, and not excepted, in and upon the poſſeſſion of the ſaid *T. O.* and *H. H.* thereof, *to wit*, at *L.* aforeſaid in the county of *S.* aforeſaid, and ejected,

Plea, that the plaintiff entered into part of the demiſed premiſſes before any rent was due.

 expelled

expelled and amoved the said *T. O.* and *H. H.* from their possession thereof, and held out the said *T. O.* and *H. H.* so therefrom ejected, expelled and amoved from their said possession thereof, from thence until and after the said feast of the annunciation of the blessed virgin *Mary* in the said declaration last mentioned; and this they are ready to verify: Wherefore they pray judgment, if the said *F. O.* the present plaintiff, ought to have or maintain her said action thereupon against them, &c.

Replication, Non intravit.

And the said *F.* saith, that she by any thing by the said *T.* and *H.* above in pleading alledged, ought not to be barred from having her said action thereupon against them, because she saith, that she the said *F.* did not enter into the said chamber called the great parlour, parcel of the parsonage-house parcel of the said premisses, with the appurtenances, in form aforesaid demised to the said *T. O.* and *H. H.* nor did she eject, expel and amove them from the same, in manner and form as the said *T.* and *H.* above in pleading have alledged; and this she prayeth may be inquired of by the county.

Issue.

And the said *T.* and *H.* do so likewise, &c. *Therefore* it is commanded to the sheriff of the county of *S.* that he cause to come before our lord the king and lady the queen at *W.* on —— next after —— twelve, &c. of the neighbourhood of *L.* aforesaid, by whom, &c. To recognize, &c. Because as well, &c. The same day is given to the parties aforesaid at the same place, &c.

Venire *awarded to the sheriff of the county where the premisses lie.*

Northamptonshire, to wit, R. R. the elder, late of the parish of *D.* in the county aforesaid, husbandman, was summoned to answer *E. F.* gent. of a plea, that he render to him 100*l.* which he oweth him and unjustly detaineth: And whereupon the said *E.* by *W. L.* his attorney saith, that *whereas* the said *E.* on the 29th day of *December* in the year of our Lord 1698, at the parish of *D.* aforesaid, demised and to farm let to the said *R.* one messuage and four yards of land, lying and being in the parish of *D.* aforesaid, and also one other yard of land lying and being, &c. with the appurtenances, except out of the said demise to the said *E. F.* all that little close of meadow called the *Goods close*, &c. *To hold* the said demised premisses, with the appurtenances, (except before excepted) to the said *R.* from thenceforth as long as it should please both the said parties: *Yielding* and paying therefore to the said *E.* as long as the said *R.* should hold and enjoy the said demised premisses, (except before excepted) after the rate of 50 *l.* of lawful money of *England* by the year, to be paid at the two most usual feasts, *to wit*, the feasts of the annunciation of the blessed virgin *Mary* and of St. *Michael* the archangel, by even and equal portions. By *virtue* of which said demise the said *R.* entered into the said demised premisses with the appurtenances (except before excepted) and was possessed thereof, and continued possessed thereof, for one whole year thence next ensuing. *And* 50 *l.* of the said rent,

Declaration in debt for rent on a lease at will.

Habendum.

Reddendum.

Defendant entered.

Rent arrear.

rent, parcel of the ſaid 100*l.* for the ſaid one year ended at the ſaid feaſt of St. *Michael* the archangel laſt paſt, were in arrear and ſtill are

Actio acc. evit.

in arrear and unpaid to the ſaid *E.* *Whereby* an action accrued to the ſaid *E.* to demand and have of the ſaid *R.* the ſaid 50*l.* parcel of the ſaid 100*l.* *Yet* the ſaid *R.* altho' often requeſted, *&c.* hath not yet rendered to the ſaid *E.* the ſaid 50*l.* parcel of the ſaid 100*l.* but hath hitherto intirely refuſed, and ſtill

Laid over again.

doth refuſe to render the ſame to him. *And alſo whereas* the ſaid *E. F.* on the ſaid 29th day of *September* in the ſaid year of our Lord 1698, at *D.* aforeſaid, demiſed and to farm let to the ſaid *R.* one other meſſuage, *&c.*

Habendum.

with their appurtenances; *To have and to hold* the ſaid laſt mentioned tenements with the appurtenances to the ſaid *R.* from thenceforth as long as it ſhould pleaſe both the ſaid

Reddendum.

parties: *Yielding* and paying therefore to the ſaid *E.* as long as the ſaid *R.* ſhould hold and enjoy the ſaid laſt mentioned demiſed premiſſes, after the rate of 50*l.* of lawful money of *England* by the year, at the two moſt uſual feaſts, *to wit*, the feaſts of the annunciation of the bleſſed virgin *Mary* and of St. *Michael* the archangel, by even and equal

Defendant entered.

portions. By *virtue* of which ſaid demiſe the ſaid *R.* afterwards, *to wit*, on the 1ſt day of *October* in the ſaid year of our Lord 1698, laſt mentioned, entered into the ſaid demiſed premiſſes with the appurtenances, and was poſſeſſed thereof, and continued poſſeſſed thereof for one whole year thence next enſuing

ensuing. *And* 50 *l.* of the said rent, residue of the said 100*l.* for the said one year ended at the feast of St. *Michael* the archangel last past, were in arrear, and still are in arrear and unpaid to the said *E. Whereby* an action accrued to the said *E.* to demand and have of the said *R.* the said 50 *l.* residue of the said 100 *l. Yet* the said *R.* altho' often requested, *&c.* hath not yet rendered to the said *E.* the said 50 *l.* residue of the said 100*l.* but hath hitherto intirely refused, and still doth refuse to render the same to him, to the damage of the said *E.* of 50 *l.* and thereof he bringeth suit, *&c.*

Rent arrear.

Actio accrevit.

Middlesex, to wit, *M. W.* late of *London*, widow, executrix of the testament and last will of *E. W.* of the parish of *St. Giles Cripplegate* in the county of *M.* grasier, was summoned to answer *H T.* of a plea, that she render to him 36 *l.* 5 *s.* which she *oweth* him, and unjustly detaineth, *&c* And whereupon the said *H.* by *W. M.* his attorney saith, *That whereas* by certain articles of agreement, made at the said parish of *St. Giles Cripplegate*, on the 23d day of *October* in the year of our Lord 1689, between the said *H. T.* by the name of *H. T.* citizen and blacksmith of *London*, of the one part, and the said *E.* by the name of *E. W.* of the parish of *St. Giles Cripplegate* in the county of *M.* grasier, of the other part, *the* counterpart of which sealed with the seal of the said *E.* the said *H.* bringeth here into court, the date whereof is on the same day and year, *the* said *H* demised, granted, let and to farm let, to the said

Declaration in debt against an executrix for rent incurred in her own time.

Articles.

Profert.

Demise.

said *E.* all those six acres of meadow, more or less, lying and being in the common field called the *Pesthouse-field*, and in a field near a certain house called the *Halfway-house*, and in a field called the *Conduit-field*, in the several parishes of *St. Giles Cripplegate* aforesaid, and *St. Leonard Shoreditch*, in the said county of *M.* *To hold* and occupy to the said *E.* his executors, administrators and assigns, from the feast of the nativity of our Blessed Lord and Saviour then next ensuing, for the term of 7 years thence next ensuing, and fully to be complete and ended; *Yielding* and paying therefore yearly the sum of 3 *l.* and 10 *s.* for every acre of the said land, being in the whole 21 *l.* by even and equal portions quarterly at the feast of the annunciation of the blessed virgin *Mary*, the feast of the nativity of St. *John* the baptist, the feast of St. *Michael* the archangel, and the feast of the nativity of our Lord, as by the said articles amongst other things more fully appears; *By* virtue of which demise the said *E.* entered into the tenements and premisses above demised, with the appurtenances, and was possessed thereof. *And* being so thereof possessed, the said *E.* afterwards, *to wit*, on the 1st day of *March* in the 6th year of the reign of our sovereign lord *William*, now king, and sovereign lady *Mary*, late queen of *England*, &c. at the said parish of *St. Giles Cripplegate*, made his testament and last will in writing, and constituted and appointed the said *M.* executrix of the said testament, and afterwards died there, so thereof possessed,

Habendum.

Reddendum.

Testator entered.

Makes his will, and defendant executrix, and dies.

ſed, after whoſe death, the ſaid *M.* there took upon her the burthen of the execution of the ſaid teſtament; *And* afterwards, *to wit*, on the ſame day and year, entered into the ſaid tenements and premiſſes above demiſed and granted, and was poſſeſſed thereof by reaſon of the execution of the ſaid teſtament; and 36*l.* 5*s.* of the ſaid rent for one year and three quarters of a year at the feaſt of St. *Michael* the archangel in the 7th year of the reign of our ſovereign lord the preſent king, were in arrear to the ſaid *H.* and are ſtill unpaid; *whereby* an action accrued to the ſaid *H.* to demand and have of the ſaid *M.* the ſaid 36*l.* 5*s.* *Yet* the ſaid *M.* although often requeſted, &c. hath not yet paid the ſaid 36*l.* to the ſaid *H.* but hath hitherto refuſed, and ſtill doth refuſe to pay him the ſame. Wherefore he ſaith he is injured, and hath damage to the value of 40*l.* And therefore he bringeth ſuit, &c.

Defendant enters.

Actio accrevit.

And the ſaid *M.* by *F. R.* her attorney, cometh and defendeth the force and injury when, &c. And ſaith that the ſaid *H. T.* ought not to have or maintain his ſaid action thereupon againſt her; *becauſe* ſhe ſaith, that after the making the ſaid articles in the ſaid declaration mentioned, the ſaid *E. W.* in his life-time, by his certain writing ſealed with his ſeal, made at the ſaid pariſh of *St. Giles Cripplegate* in the county aforeſaid, on the 21ſt day of *January* in the year of our Lord 1692, *which* the ſaid *M.* bringeth here into court, for and in conſideration of the ſum of 18*l.* 5*s.* 6*d.* to the ſaid *E.* in hand

Plea.

Teſtator aſſigned the term.

Profert.

hand paid by one *R. H.* bargained, fold and affigned to the faid *R. H.* All his eftate, right, title and property, claim and demand whatfoever, of, in, to or out of the faid demifed premiffes, by force or virtue of the faid written leafe or inftrument, or otherwife howfoever; *By virtue* whereof he the faid *R.* afterwards, *to wit*, on the 1ft day of *February* in the year of our Lord 1692, entered into the faid demifed premiffes, fo as aforefaid, bargained, fold and affigned to him with the appurtenances, and was, and ftill is poffeffed thereof. *And* the faid *M.* further faith, that he the faid *E. W.* in his life-time, afterwards, *to wit* on the 10th day of *February* in the year laft aforefaid, at the parifh aforefaid, in the county aforefaid, gave notice to the faid *H.* of the faid affignment fo made to the faid *H.* as aforefaid: And this the faid *M.* is ready to verify. Wherefore fhe prayeth judgment, if the faid *H.* ought to have or maintain his faid action thereupon againft her, &c.

Leffee entered.

Teftator gave notice to Plaintiff.

The Plaintiff did not dare to go on, becaufe the declaration fhould have been in the Detinet *only, and not in the* Debet *and* Detinet. Sed. Q.

Declaration in debt for rent on a leafe parol.

Warwickfhire, to wit, *W. B.* late of *Ilmington* in the county of *W.* aforefaid, yeoman, was fummoned to anfwer *R. H.* of a plea, that he render to her 74 *l.* of good and lawful money of *Great Britain*, which he oweth her, and unjuftly detaineth from, &c. And where-

whereupon the ſaid *R.* by *R. S.* her attorney ſaith, that whereas ſhe, on the 2d day of *December* in the 3d year of the reign of our lord the now king, at *Stratford* in the ſaid county, did demiſe to the ſaid *W.* one meſſuage and fifty acres of land, meadow and paſture with the appurtenances, in *Ilimington* in the county aforeſaid; to have and to hold to him and his aſſigns, from the firſt day of *November* then laſt paſt, to the full end and term of one whole year from thence next enſuing, and fully to be compleat and ended, and ſo from year to year, as long as both parties ſhall pleaſe; yielding and paying therefore yearly, and every year, to the ſaid *R.* the rent of 25*l.* on the firſt day of *May*, and the firſt day of *November*, by even and equal portions; the firſt payment to be made on the 1ſt day of *May* then next enſuing; by virtue of which ſaid demiſe the ſaid *W.* entered upon the ſaid tenements, with the appurtenances, and enjoyed the ſame: And the ſum of 74*l.* rent for three years, on the 1ſt day of *November* in the year of our Lord 1733, was due in arrear to the ſaid *R.* and ſtill is unpaid; whereby an action accrued to the ſaid *R.* to demand and have of the ſaid *W.* the ſaid 74*l.* rent; yet the ſaid *W.* though often requeſted, hath not rendered the ſaid 74*l.* to the ſaid *R.* but hath refuſed, and ſtill doth refuſe, to render the ſame to her, to the damage of the ſaid *R.* of 10*l.* And thereof ſhe bringeth ſuit, &c.

Replication, that the defendant being a

And the ſaid *A. H.* ſaith, that he by any thing by the ſaid *J.* above in pleading alledged

servant of the warden of the Fleet, *permitted a prisoner to escape.*

ledged ought not to be barred from having his said action thereupon against the said *J.* *because* he saith, that the said *T. F.* in his life-time, *to wit*, at the time of making the said writing obligatory, and also on the first day of *April* in the 7th year of the reign of *William* III. late king of *England*, &c. and before, was warden of the prison of the said late king, of the *Fleet*, to wit, at *London* aforesaid, in the parish of St. *Mary le Bow* in the ward of *Cheap*. And the said *J. T.* for the whole time aforesaid, *to wit*, on and before the said 1st day of *April*, and also at the time of making the said writing obligatory, was a servant under the said *T. F.* having and exercising the care and custody of the said prison and the prisoners thereto committed, *to wit*, at the parish and ward aforesaid; and that the said *T.* was so warden of the said prison, and the said *J.* as before said, had and exercised the care and custody of the said prison and the prisoners thereunto committed; and lately before the making the said writing obligatory, *to wit*, on the same 1st day of *April* before mentioned, at the parish and ward aforesaid, one *F. H.* gent. was a prisoner in the said prison of the *Fleet* in execution, at the suit of one Sir *A. H.* knt. for a certain debt of 1000*l.* 46*s.* for damages, and then and there without the licence, and against the proper will of the said *T. F.* and with the licence and permission of the said *J. T.* escaped out of the said prison; the said Sir *A.* being then no ways satisfied for the debt and damages aforesaid; whereof

whereof the ſaid *J.* at and before the time of making the ſaid writing, had notice, *to wit*, at *London* aforeſaid in the pariſh and ward aforeſaid. *And* the ſaid *T.* being ſo as aforeſaid warden of the ſaid priſon, the ſaid Sir *A. H.* knt. before the making the ſaid writing obligatory, *to wit*, on the 12th day of *April* in the term of *Eaſter* in the 7th year of the reign of the ſaid king, came into the court of the ſaid late king, before Sir *G. T.* knt. and his companions, juſtices of the ſaid king of the bench at *Weſtminſter*, by *H. C.* then his attorney, and then exhibited to the ſaid juſtices his certain bill againſt the ſaid *T. F.* warden of the priſon of the ſaid late king, of the *Fleet*, then preſent in the ſame court in his proper perſon, of a plea of debt; by which ſaid bill the ſaid Sir *A.* then complained that the ſaid *T.* unjuſtly detained, and did not render to the ſaid Sir *A.* 1000*l.* 46*s.* which he owed him, for that, *to wit*, that *whereas* the ſaid Sir *A.* heretofore, *to wit*, in the term of *Eaſter* in the 5th year of the reign of the ſaid late king and the lady *Mary* the late queen, in the court of the ſaid late king and queen, before the ſaid late king and queen, the ſaid court being then at *Weſtminſter* in the county of *M.* by bill without the writ of the ſaid late king and queen, and by the judgment of the ſame court, had recovered againſt the ſaid *F. H.* gent. as well a certain debt of 1000*l.* as 46*s.* which in the ſame court were adjudged to the ſaid Sir *A.* for his damages which he had ſuſtained as well by occaſion of the

Bill filed againſt the warden for the eſcape, ſetting forth.

The judgment obtained againſt the priſoner in B. R.

the detaining that debt, as for his cofts and charges by him about his fuit in that behalf expended, whereof the faid *F.* was convicted, *And* the faid *F. H.* afterwards, *to wit*, on *Monday* next after the morrow of the afcenfion of our Lord in the 6th year of the reign of the faid late king and queen, then being prefent in his proper perfon in the faid court of the faid late king and queen before the faid late king and queen at *Weftminfter* in the county of *M.* aforefaid, at the prayer of the faid Sir *A.* was committed by the faid court of the faid late king and queen, before the faid late king and queen there, to the cuftody of the marfhal of the *Marfhalfea* of the faid late king and queen before the faid late king and queen, in execution for the debt and damages aforefaid, at the fuit of the faid Sir *A.* there to remain until, &c. as by the record and proceedings as well of the faid judgment as of the faid commitment in execution, remaining in the faid court of the faid late king, before the faid late king at *Weftminfter* aforefaid, more fully appeared. By virtue of which faid commitment the faid marfhal of the faid *Marfhalfea* then and there received the faid *F.* into his cuftody, and had and detained him in execution for the faid debt and damages.

His being committed in execution there;

And the faid *F.* being fo in the cuftody of the marfhal of the faid *Marfhalfea*, in execution for the faid debt and damages in form aforefaid, afterwards, *to wit*, on the 24th day of *May* in the 6th year aforefaid, the faid *F.* came in his proper perfon, being

removed by Habeas Corpus;

brought under the custody of the said marshal of the *Marshalsea* aforesaid, by virtue of the writ of the said late king and queen of *Habeas Corpus* of the said *Francis*, directed to the said Marshal, issuing out of the court of the said late king and queen of the bench at *Westminster* aforesaid, before Sir *J. P.* knt. then one of the justices of the said late king and queen of the bench, at his chambers situated in *Serjeants-inn* in *Chancery-lane*, *London*; and the said marshal, *to wit*, *W. B.* esq; then and there returned to the said justice (amongst other things) that the said *F. H.* was charged in execution at the suit of the said Sir *A.* for the said 1000*l.* of debt, and 46*s.* for damages so as aforesaid recovered, the body of which said *F.* he then and there had ready, according to the tenor of the said writ: *Whereupon*, the said *F. H.* then and there was committed by the said justice to the prison of the said king and queen of the *Fleet* in execution for the said debt and damages, (amongst other things) there to remain until, *&c.* which said commitment the said justice afterwards, *to wit*, on the 8th day of *June* in the term of the holy *Trinity* in the 6th year aforesaid, by his own proper hands delivered unto the said court of the bench aforesaid, to be inrolled of record, and the same commitment was inrolled of record in the same court, as by the record of the said writ and the return thereof, and the commitment in execution last mentioned, remaining in the same court of the bench aforesaid, *to wit*, at *Westminster* aforesaid,

committed to the custody of the warden.

 then

then more fully and plainly appeared; by virtue of which said commitment the said *T. F.* being warden of the said prison of the *Fleet*, on the said 24th day of *May* in the 6th year aforesaid, then and there, *to wit*, before the said justice at his chambers aforesaid situate in *Serjeants-Inn* aforesaid, took the said *F. H.* into his custody, and immediately led and put the said *F. H.* unto and in the said prison of the *Fleet*, then being at *London*, *to wit*, in the parish of *St. Bridget*, otherwise *St. Brides*, in the ward of *Farrington without*, and then and there had and detained the said *F.* in the said prison in execution for the debt and damages aforesaid: *And* the said *F.* being so, as aforesaid, in the custody of the said *T.* in execution for the said debt and damages in form aforesaid, the said *T.* afterwards, *to wit*, on the 1st day of *April* in the 7th year of the reign of our said late lord king *William* the third, then being warden of the said prison of the said lord the king as aforesaid, had permitted the said *F.* to go at large freely and voluntarily where he would, and to escape out of the said prison and out of his custody, *to wit*, at *London* aforesaid, in the parish and ward aforesaid, the said Sir *A.* being then no ways satisfied for the said debt and damages or any parcel thereof; *whereby* an action had accrued to the said Sir *A.* to demand and have of the said *T.* the said 1002 *l.* 6 *s.* *Yet* the said *T.* although he had been often requested, had not then rendered the said 1002 *l.* 6 *s.* to the said Sir *A.* but had then

and permitted to escape.

intirely

intirely refused and then refused to render the same to him; wherefore the said Sir *A.* then said he had been injured and had damage to the value of 500 *l.* and thereupon he then prayed remedy, *&c.* with this that he the said Sir *A.* would then verify that the said judgment then remained in its full force and strength, no ways revoked, reversed, annulled, vacated or satisfied, *&c.* and he then found pledges for prosecuting, *to wit, John Doe* and *Richard Roe*: *Upon* which said bill first mentioned in the said court of the said late king before the said justices of the said late king of the bench at *Westminster* such proceedings were then afterwards, *to wit,* in that same term of *Easter* in the said 7th year of the reign of the said late king, that the said Sir *A. H.* by the consideration of the same court, recovered against the said *T. F.* the said debt of 1002 *l.* 6 *s.* and his damages by occasion of the detaining the debt to 80 *s.* adjudged by the said court of the said late king to the said Sir *A.* and that the said *T.* should be in mercy, *&c.* *And* the said Sir *A.* further saith, that after the said judgment in form aforesaid given, and after the making the said writing obligatory, *to wit,* on the 24th day of *May* in the said 7th year of the reign of the said late king, the said *T. F.* by the advice and at the request of the said *J. T.* for the reversing the said judgment, sued forth out of the chancery of the said late king, the same court being then here at *Westminster* in the county of *Middlesex,* a certain writ of the said late king for correct-

Judgment against the warden.

Removed by writ of error.

ing errors in the ſaid record and proceedings, and in giving the ſaid judgment, directed to Sir *G. T.* knt. then chief juſtice of the ſaid late king of the bench, by which ſaid writ the ſaid late king commanded his ſaid chief juſtice, that if judgment was given thereupon, that then he ſhould ſend to the ſaid late king diſtinctly and plainly under his ſeal the record and proceſs of the ſaid plaint, with all things touching the ſame and the ſaid writ, ſo that the ſaid late king might have them from the day of the holy *Trinity* in three weeks then next enſuing, whereſoever he ſhould then be in *England*, that inſpecting the record and proceſs aforeſaid, he might cauſe further to be done thereupon for amending the ſaid errors, as of right and according to the law and cuſtom of his kingdom of *England* ſhould be meet to be done; by virtue of which ſaid writ for correcting errors, afterwards, at the ſaid day of the return of the ſaid writ, the ſaid record and proceſs of the ſaid plaint, with all things touching the ſame, were in due manner ſent and removed into the court of the ſaid late king before the ſaid late king, the ſaid court then being at *Weſtminſter* in the county of *Middleſex* aforeſaid: *Upon which* ſuch proceſs was upon the ſaid writ for correcting errors in the ſaid court of the ſaid late king before the ſaid late king, that afterwards, *to wit*, in the term of *Eaſter* in the 8th year of the reign of the late king, it was conſidered by the ſaid court of the ſaid late king before the ſaid late king, that the ſaid judgment

Affirmed in B. R.

ſhould

ſhould ſtand in its full ſtrength and effect, that the ſaid judgment ſhould be in all things affirmed, as by the record and proceſs of the ſaid judgment remaining in the court of our ſaid lady the preſent queen before the queen herſelf at *Weſtminſter* more fully appeareth; which ſaid judgment ſtill remaineth in its full force and effect, no ways reverſed, annulled or ſatisfied. *And* the ſaid Sir *A.* further ſaith, that the ſaid *T.* in his life-time, *to wit*, within the ſpace of two years next after the date of the ſaid writing obligatory, and ſoon after the making the ſame, *to wit*, on the 21ſt day of *May* in the year of our Lord 1695, aforeſaid, at *London* aforeſaid, *to wit*, in the pariſh of *St. Mary le Bow* in the ward of *Cheap* aforeſaid, gave notice to the ſaid *J. T.* of the ſaid action ſo as aforeſaid proſecuted by the ſaid Sir *A. H.* againſt the ſaid *T.* and requeſted the ſaid *J.* to indemnify the ſaid *T.* therefrom; *Yet* the ſaid *J. T.* within the ſpace of two years next enſuing the date of the ſaid writing obligatory, or at any time afterwards in the life-time of the ſaid *T.* did not indemnify or ſave harmleſs the ſaid *T. F.* from the ſaid action ſo as aforeſaid proſecuted by the ſaid Sir *A. H.* knt. againſt the ſaid *T.* And this he is ready to verify: Wherefore he prayeth judgment and his ſaid debt, together with his damages by occaſion of the detaining that debt, to be adjudged to him, *&c.*

Notice thereof to the deft.

who did not ſave the warden harmleſs.

Anthony Rock.
Wm. Kempe.

Memorandum of a bill.

Be it remembered, that on the 23d day of *January* in this same term, *C. P.* by *J. B.* his attorney, came here into court and exhibited his certain bill against *T. F.* esq; warden of the prison of our lord the present king of the *Fleet*, present here in court in his proper person, of a plea of debt, the tenor of which said bill follows in these words: *To* the justices of our lord the king of the bench, *Middlesex, to wit, C. P.* by *J. B.* his attorney complaineth of *T. F.* esq; warden of the prison of our lord the king of the *Fleet*, present here in court in his proper person, for that, that he has not rendered to the said *C.* 151 *l.* 3 *s.* of lawful money which he oweth him, and unjustly detaineth, for that, *to wit*, that *whereas* the said *C.* heretofore, *to wit*, in the term of *Easter* in the 4th year of the reign of our lord the now king and lady *Mary* late queen of *England*, in the court of our said lord the king and lady the late queen, before the said king and late queen, the said court then being at *Westminster* in the county of *Middlesex*, by the judgment of the said court recovered against *M. G.* otherwise called *M. G.* of *London*, gent. 150 *l.* of debt, and also 23 *s.* for his damages which he sustained, as well by occasion of the detaining that debt, as for his cost and charges by him about his suit in that behalf expended, whereof the said *M.* was convicted, as by the record thereof now remaining in the court of our said lord the present king before the king himself at *Westminster* aforesaid more fully appears; which said

Bill in debt against the warden of the Fleet *for the escape of a prisoner in execution.*

Judgment in debt against the prisoner in B. R.

said debt and damages in the whole amount to the said 151 *l.* 3 *s.* *And* afterwards, to *wit*, on *Monday* next after the octave of the purification of the blessed *Mary* in the term of *Hilary* in the 4th and 5th years of the reign of our said lord the king and lady the late queen, in the said court of our said lord the king and lady the late queen before the said king and late queen at *Westminster* aforesaid, the said *C.* came in his proper person, and the said *M.* then present in the same court, and being then in the said court, at the prayer of the said *C.* was in due manner committed by the court to *W. B.* esq; then marshal of the *Marshalsea* of our said lord the king and lady the late queen, before our said lord the king and lady the late queen at *Westminster*, in execution, at the suit of the said *C.* for the debt and damages aforesaid, there to remain until, &c. as by the record and proceedings thereupon remaining in the said court of our said lord the king before the king himself at *Westminster* more fully appeareth; by virtue of which said commitment the said *W. B.* then and still marshal of the *Marshalsea* aforesaid, took the said *M.* into his custody in execution for the said debt and damages, and had detained and kept the said *M.* in execution for the debt and damages aforesaid: *And* the said *M.* being as aforesaid in the custody of the marshal of the *Marshalsea* aforesaid, in execution for the said debt and damages, afterwards *to wit*, on the 7th day of *July* in the 5th year of the reign of our said lord the king and lady the late

The prisoner committed in execution;

removed by Habeas Corpus;

late queen, the ſaid *M.* being ſo as aforeſaid in execution for the ſaid debt and damages, by virtue of the writ of our ſaid lord the king and lady the late queen of *Habeas corpus cum cauſa*, in due manner iſſuing out of the court of our ſaid lord the king and lady the late queen of the bench here, and directed to the ſaid marſhal of the *Marſhalſea* of our ſaid lord the king and lady the late queen, before the ſaid lord the king and lady the late queen was brought and had with the ſaid cauſe aforeſaid, by the marſhal of the *Marſhalſea*, aforeſaid, charged in execution with the cauſe aforeſaid, before *J. B.* then being one of the juſtices of our lord the king and lady the late queen of the bench here, at the pariſh of *St. Clement Danes*: *And* thereupon the ſaid *M.* then and there, *to wit*, on the ſaid 7th day of *July* in the 5th year aforeſaid, at the ſaid pariſh of *St. Clement Danes* aforeſaid, was in due manner committed by the ſaid *J. P.* then one of the juſtices of our ſaid lord the king and lady the late queen of the bench here as aforeſaid, to the cuſtody of the ſaid *T. F.* then and yet warden of the priſon of the *Fleet* aforeſaid, charged in execution for the debt and damages aforeſaid, as by the record and proceedings thereupon remaining in the ſaid court of the bench here more fully appeareth; by virtue of which ſaid commitment the ſaid *T. F.* then being warden of the ſaid priſon of the *Fleet*, then and there had and detained the ſaid *M.* in his cuſtody, in execution for the debt and damage aforeſaid;

committed to the cuſtody of the defendant.

said; *The* said *T. F.* then and still being warden of the said prison of the *Fleet*, afterwards, *to wit*, on the 23d day of *November* in the 6th year of the reign of our said lord the king and lady the late queen, at the said parish of *St. Clement Danes*, well knowing the premisses, no ways regarding the duty of his office, but contriving and fraudulently intending to cause the said debt and damages to be wholly lost, against the will and without the licence and notice of the said *C* the said *C.* being no ways satisfied for the said debt and damages, or any parcel thereof, then and there permitted the said *M.* to go at large where he would, and to escape out of the custody of the said *T. F.* then and yet being warden of the said prison of the *Fleet*, and out of the said execution; whereby an action accrued to the said *C.* to demand and have of the said *T. F.* the said 151 *l.* 3 *s.* *Yet* the said *T. F.* hath not yet rendered the said 151 *l.* 3 *s.* to the said *C.* but hath intirely refused to render the same to him. Wherefore he saith he is injured, and has damage to the value of 20 *l.* And thereupon he prayeth remedy, *&c.* Pledges for prosecuting *J. D.* and *R. R.*

who permitted him to escape.

Actio accrevit.

And the said *T. F.* in his proper person cometh and defendeth the force and injury when, *&c.* And saith, that the said declaration, and the matter therein contained, are not sufficient in law for the said *T.* to have and maintain his said declaration against the said *T.* And that he the said *T.* hath no need, and is not bound by the law of the land

Demurrer to the bill.

Salk. 753.

land in any manner to anſwer to the ſaid declaration made in manner and form aforeſaid; and this he is ready to verify: Wherefore for default of a ſufficient declaration, the ſaid *T.* prayeth judgment, and that the ſaid *C.* may be barred from having his action thereupon againſt the ſaid *T.*

Joinder.

And the ſaid *C.* for that he hath in his ſaid declaration above declared ſufficient matter in law, to have and maintain his ſaid action againſt the ſaid *T.* which he is ready to verify; which ſaid matter the ſaid *T.* doth not deny, nor any ways anſwer thereto, but intirely refuſeth to admit the verifying the ſame, as before, prayeth judgment, and his ſaid debt, together with his damages, by occaſion of the detaining that debt, to be adjudged to him, &c.

Continuance by Cur' advisar'.

And becauſe the juſtices here would adviſe themſelves of and upon the premiſſes, before they give their judgment thereupon, day is given unto the ſaid parties here, until *Wedneſday* next after 15 days of *Eaſter*, to hear their judgment thereupon, for that the ſaid juſtices here are not yet, &c.

Judgment for the plaintiff.

At which day here came as well the ſaid *C.* by his attorney aforeſaid, as the ſaid *T.* in his proper perſon, and hereupon the premiſſes being ſeen and fully underſtood by the juſtices here, it ſeemeth to the ſaid juſtices here, that the declaration and matter therein contained are ſufficient in law for the ſaid *C.* to have and maintain his ſaid action againſt the ſaid *T.* as the ſaid *C.* hath above alledged. *Therefore* it is conſidered, that the ſaid *C.* recover againſt the ſaid

said *T.* his said debt, and his damages by occasion of the detaining that debt, to 100*s.* adjudged by the court here to the said *G.* by his assent. And the said *T.* in mercy *&c.*

Suggestion, after final judgment in debt on a bond, that the bond was upon condition for performance of covenants pursuant to the stat. 8. & 9 W. 3. c. Scaccario.

The condition of the bond for performance of covenants in indenture.

And now at this day, *to wit*, on the 15th day of *June* in *Trinity* term in the 14th year of the reign of our said sovereign lord *George* the third, come the said bailiffs and citizens of the said city of *Litchfield* by the said *R. M.* their attorney, and say, that the said writing obligatory in the said bill of the said bailiffs and citizens exhibited against the said *Edward Tart*, was under this condition, That if one *Thomas Tart*, his executors, administrators or assigns, did well and truly observe, perform, fulfil, accomplish, pay, and keep all and singular the covenants, grants, articles, clauses, provisoes, payments, conditions and agreements whatsoever, which on the part and behalf of the said *T. T.* his heirs, executors, administrators or assigns, were or ought to be observed, performed, fulfilled, accomplished, paid and kept, comprised or mentioned in one indenture of lease bearing date with the said writing obligatory, and made or expressed to be made between *Luke Robinson*, gent. and *Edward Holmes*, gent. bailiffs of the said city of *Litchfield*, and their brethren the citizens of the said city, of the one part, and the said *T. T.* of the other part, in all things according to the true intent and meaning of the same; then the said writing obligatory was to be void and of none effect, or else should be

be and remain in full force, power and virtue. And that the ſaid indenture in the ſaid condition mentioned was made on the ſaid 18th day of *March* in the year of our Lord 1776. between the ſaid *Luke Robinſon* and *Edward Holmes* then bailiffs of the ſaid city of *L.* and their brethren the citizens of the ſaid city, of the one part, and the ſaid *T. T.* in the ſaid condition mentioned by the name of *T. T.* of *B.* in the county of *W.* tiremaker, of the other part; which other part of the ſaid indenture ſealed with the ſeal of the ſaid *T. T.* the ſaid bailiffs and citizens of the ſaid city of *L.* bring here into court, the date whereof is the ſame day and year laſt mentioned, whereby the ſaid *L. R.* and *E. H.* the ſaid bailiffs and their brethren the citizens of the ſaid city, for and in conſideration of the rents, covenants and agreements therein after mentioned, expreſſed and reſerved, and on the part and behalf of the ſaid *T. T.* his executors, adminiſtrators and aſſigns, to be paid, done and performed, did with one aſſent, conſent, and agreement for them and their ſucceſſors, bailiffs and citizens of the ſaid city, demiſe, leaſe, ſet and to farm let unto the ſaid *T. T.* his executors, adminiſtrators and aſſigns, all thoſe their water corn-mills ſet, ſituate, ſtanding and being in or near *Stowe-ſtreet* in the ſaid city of *L.* called *Stowe-mills*, and all houſes, buildings, ways, waters, pools, ponds, dams, and flood-gates to the ſaid mills, or any of them belonging, with all and every of their appurtenances, and all, and all manner of going and

The indenture.

Profert *of the indenture.*

and running-geer belonging to and ufed with the faid mills; and alfo all and all manner of goods and chattels, utenfils, implements and tools whatfoever of them the faid bailiffs and citizens then ftanding, remaining on being in, at, or belonging to the faid mills, and which the then tenants of were obliged to leave there; and that little piece of building then lately ufed as a walk-mill, but then demolifhed and plucked down, with the land whereon the faid building ftood. And alfo all that the pifcary or fifhing in the *Nether-pool*, otherwife called *Stowe-poole*, adjoining to the faid mill; and all that the faid pool called *Nether-pool* or *Stowe-pool*, as the fame was then meared, bounded and ftaked out, with liberty alfo of landing the nets on the wafte lands belonging to the faid bailiffs and citizens gained out of the faid pool, which were not then in leafe to any other perfons, and all privileges and advantages to and with the faid pool, pifcary, and fifhing ufually enjoyed, and all houfes, outhoufes, edifices, buildings, ways, waters, water-courfes, pools, ponds, dams, ftreams, flood-gates, eafements, commons, profits, commodities, advantages, hereditaments and appurtenances whatfoever to the premiffes aforefaid belonging or in any wife appertaining, or accepted, reputed, deemed, taken or known as part, parcel, or member thereof, with free liberty alfo to and for the faid *T. T.* his executors, adminiftrators and affigns to pull down the faid mill, and to apply the materials thereof, utenfils and geering thereto

to belonging, as he or they should think proper; he or they erecting or building in the same place another good and substantial mill with fit and proper wheels and appurtenances as therein after mentioned. Except and always reserved out of that demise unto the said bailiffs and citizens, their successors and assigns, all such waste grounds or lands gained out of the said pool as was not staked and set out as aforesaid: *To have* and to hold the said mills, pools, fishery and premisses thereby demised, or so intended to be (except before excepted) with their and every of their appurtenances unto the said *T. T.* his executors, administrators and assigns from the 24th day of *June* next ensuing the date of the said indenture, for and during and unto the full end and term of 31 years from thenceforth next ensuing, fully to be compleat and ended; *Yielding* and paying therefore yearly and every year, during the first six years of the said demised term, unto the said bailiffs and citizens, their successors and assigns, the rent or sum of 5 *l.* of lawful money of *Great Britain*, upon two of the most usual feast-days or days of payment in the year, by even and equal portions without any deduction or abatement whatsoever (except only for the land-tax, and also yielding and paying yearly and every year unto the said bailiffs and citizens, their successors and assigns, during the last 25 years of the said demised term, the rent or sum of 30 *l.* of like lawful money upon the same feast-days and times of payment, without any deducti-

Habendum.

Reddendum.

on or abatement whatſoever (except only for the land-tax, which the ſaid bailiffs and citizens were to pay and diſcharge.) *And* the ſaid *T. T.* for himſelf, his executors, adminiſtrators and aſſigns, and every of them, did covenant, promiſe and grant to and with the ſaid bailiffs and citizens and their ſucceſſors and aſſigns by the ſaid indenture, that he the ſaid *T. T.* his executors, adminiſtrators or aſſigns, or ſome of them, ſhould and would yearly and every year during the ſaid demiſed term, well and truly pay, or cauſe to be paid unto the ſaid bailiffs and citizens, their ſucceſſors and aſſigns, the ſaid yearly reſerved rents of five pounds, and thirty pounds of lawful money of *Great Britain*, upon the reſpective days and times, and in manner and form above limited and appointed for payment thereof, without any deduction, defalcation or abatement whatſoever (except only for the land-tax); *And* alſo that he the ſaid *T. T.* his executors, adminiſtrators or aſſigns, ſhould and would, within the ſpace of ſix years from the day of the date of the ſaid indenture, erect and build, or cauſe to be erected and built, a good ſet of mills at and upon the ſame place where the ſaid demiſed mills then ſtood, and ſhould and would expend and lay out in building the ſame the ſum of 350*l.* and ſhould and would make ſuch mills good, firm and ſubſtantial, with proper wheels, gates, utenſils and other appurtenances fit for carrying on ſome ſort of iron manufactory, and ſhould and would during the ſaid term repair, up-

Covenants.

hold, maintain and keep not only the ſaid mills ſo to be erected and built, but alſo the floodgates, waſtes, bridges and dams belonging to the ſaid mills and pool, with all needful and neceſſary reparations, as by the ſaid indenture amongſt other things more fully appears. *And* the ſaid bailiffs and citizens of the city of *L.* in fact ſay, that before the feaſt of the nativity of our Lord in the year of our Lord 1769, the ſaid *T. T.* died, that is to ſay, at *London*, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, and that at the ſaid feaſt of the nativity of our Lord in that year the ſum of 135 *l.* of the rent of 30 *l.* aforeſaid, for four years and an half ending at that feaſt in that year, were in arrear from the executors of the laſt will and teſtament of the ſaid *T. T.* to the ſaid bailiffs and citizens of the ſaid city of *L. to wit*, at *London* aforeſaid, in the pariſh and ward aforeſaid; and the ſame ſtill remains due and unpaid, contrary to the form and effect of the ſaid covenant of the ſaid *T. T.* ſo made in that reſpect. *And* the ſaid bailiffs and citizens of the ſaid city of *L.* further ſay, that although the ſaid *T. T.* in the ſaid indenture mentioned, within ſix years next after the making of the ſaid indenture, did erect and build a ſet of mills at or upon the ſame place where the ſaid demiſed mills at the time of the making the ſaid demiſe ſtood; yet the ſaid *T. T.* did not cauſe the ſame to be well built, neither did the ſaid *T. T.* expend or lay out in building the ſame the ſum of 350 *l.* nor any ſum of money exceeding

1ſt Breach.

2d Breach.

exceeding the ſum of 100*l.* nor were the ſame ſet of mills made good, firm and ſubſtantial, with wheels, gates, utenſils, and other appurtenances fit for carrying on any ſort of iron manufactory; nor did the ſaid *T. T.* in his life-time, or any other perſon whatſoever, for the ſpace of ſix years now laſt paſt, repair, uphold, maintain or keep the ſaid new erected mills, or any of them, or any of the floodgates, waſtes, bridges, and dams belonging thereto, and pool, or any of them, but on the contrary thereof permitted and ſuffered the ſaid mills, and the ſaid floodgates, waſtes, bridges, and dams to be broken down, ruinous and in great decay for want of needful and neceſſary reparations, and the ſame ſtill remain broken down, ruinous and in great decay, that is to ſay, at *London* aforeſaid, in the pariſh of *St. Mary le Bow* in the ward of *Cheap* aforeſaid; and this the ſaid bailiffs and citizens of the city of *L.* are ready to verify; and pray judgment, and their damages by reaſon of the ſaid breaches of covenant, to be adjudged to them. *Therefore* it is conſidered by the barons here, that the ſaid bailiffs and citizens ought to recover their damages on occaſion of the premiſſes, againſt the ſaid *E. T.* But becauſe it is unknown what damages the ſaid bailiffs and citizens have ſuſtained by reaſon of the ſaid breaches of covenant; Therefore, according to the form of the ſtatute in ſuch caſe lately made and provided, the ſheriffs of *London* are commanded that they cauſe to come before Sir *Thomas*

Judgment.

Writ of Inquiry *awarded.*

mas Parker, knt. chief baron of the exchequer of our lord the king, on next after . at *Guild hall* in the city of *London*, twelve free and lawful men of their bailiwic, to inquire of the truth of the premisses by the said bailiffs and citizens above suggested; and to assess what damages the said bailiffs and citizens have sustained by reason of the breaches of covenant aforesaid; and that they should have on that day before the said chief baron the writ of the said lord the king, to them directed for that purpose. *It is likewise* commanded to the said chief baron, that he certify the inquisition before him taken to the barons of the exchequer at *Westminster*, from the day of St. *Michael* in three weeks next coming, together with that writ. And the same day is given to the said bailiffs and citizens here, *&c.*

Easter 13 Geo. 3.

Declaration in debt by baron and feme, on a bond to the feme whilst sole.

Nottinghamshire, to wit, D. *B.* late of in the said county of otherwise called *D. B.* of in the county of was summoned to answer *J. R.* and *M.* his wife, (lately called *M. M.*) of a plea, that he render to them thirty-two pounds of lawful money of *Great Britain*, which he owes and unjustly detains from them, *&c.* And whereupon the said *J.* and *M.* by their attorney complain, That whereas the said *D.* on

on the firſt day of *May* in the year of our Lord 1736, at *Mansfield* in the ſaid county of *Nottingham*, by his certain writing obligatory, ſealed with the ſeal of him the ſaid *D.* acknowledged himſelf to be held and firmly bound unto the ſaid *M.* whilſt ſhe was ſole, by the name of *M. M.* of *B.* in the county aforeſaid, victualler and grocer, in the aforeſaid thirty-two pounds of good and lawful money of *Great Britain*, to be paid to the ſaid *M. M.* her heirs, executors, adminiſtrators or aſſigns, or any of them, when he ſhould be afterwards thereto required: *Nevertheleſs* the ſaid *D.* the aforeſaid thirty-two pounds, or any part thereof, to the ſaid *M.* whilſt ſhe was ſole*, or to them the ſaid *J.* and *M.* after the marriage between them celebrated, hath not rendered (altho' often thereto requeſted) but hath wholly refuſed and ſtill doth refuſe to render the ſame to the ſaid *J.* and *M.* to the damage of them the ſaid *J.* and *M.* of forty pounds; and thereupon they bring this ſuit. *And* the aforeſaid *J.* and *M.* bring here into court the aforeſaid writing obligatory of the ſaid *D.* which teſtifies the debt aforeſaid in form aforeſaid, the date whereof is the day and year aboveſaid.

Breach.

Profert.

* *Treby*, Ch. J. *A.* brought an action of debt in right of his wife due to her before coverture, and he ſaid that the debt was not paid to the wife, but he did not ſay that it was not paid to him *poſt deſponſalia*; and upon demurrer it was adjudged ill, though it had been good after a verdict. 1 *R. Raym.* 284. *Vide* 1 *Vent.* 119.

U 3 *Trin.*

Trin. 13 & 14 *Geo.* 3.

Debt on a bond by the executrix of the obligee against the brother and heir of the obligor.

London, *to wit*, J. S. late of the town of *Hertford* in the county of *Hertford*, gent. brother and * heir of *H. S.* late of the island of *Jamaica*, esq; deceased, otherwise lately called *H. S. nunc in London sed de insula Jamaicæ Armiger*, was summoned to answer *S. F.* widow, executrix of the last will and testament of *J. F.* late of *London*, merchant, deceased, of a plea, that he render to her 4330*l.* *which he unjustly* † *detains*, &c. And whereupon the said *S.* by *J. S.* her attorney says, that whereas the said *H.* brother of the said *J.* whose heir he is, in his life time, *to wit*, on the fifth day of *November* in the year of our Lord one thousand seven hundred and twenty-five, at *London*,

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* A man seised of lands in gavelkind, having issue three sons, by obligation binds himself and his heirs, and dies; debt lies against all the three sons. 11 *H.* 7. 12. 11 *E.* 3. *tit. Dett.* 7. *Dyer* 5 *El.* 238. 1 *Inst.* 376 *b.*

A man seised of lands *ex parte materna* by obligation binds himself and his heirs, and dies; debt lies against the heir *ex parte materna*, without naming the heir at common law. 11 *H.* 7. 12. 1 *Inst.* 376. *b.*

† Debt against an heir in the *detinet* only, held bad after verdict. *Pasch.* 16 *Car.* 2. *B. R. Goodwyn* v. *Newton. Lev.* 130. Held to be cured by the *Oxford* act, being after verdict. *Mich.* 19 *Car.* 2. *B. R. Combers* v. *Walton. Lev.* 224.

to

to wit, in the pariſh of *St. Mary le Bow* in the ward of *Cheap*, by his writing obligatory, acknowledged himſelf to be bound to the ſaid *J.* in his life-time in the ſaid four thouſand three hundred and thirty pounds, to be paid to the ſaid *J.* when he ſhould be thereunto required; and to which payment, well and faithfully to be made, he bound himſelf and his * heirs by the ſaid writing: *Yet* the ſaid *H.* in his life-time, and the ſaid *J.* brother and heir of the ſaid *H.* although often required, have not, nor hath either of them, paid the ſaid four thouſand three hundred and thirty pounds to the ſaid *J.* in his life-time, or to the ſaid *S.* after the death of the ſaid *J.* but refuſeth to pay the ſame to the ſaid *J.* in his life-time, and to the ſaid *S.* after his death; and the ſaid *J.* ſtill refuſes to pay the ſame to the ſaid *S.* and unjuſtly detains in delay of the faithful execution of the ſaid teſtament: Wherefore ſhe ſays ſhe is injured, and hath damage to the value of twenty pounds: and thereupon ſhe brings ſuit, *&c.* *And* the ſaid *S.* brings here into court as well the ſaid *writing* which teſtifies the ſaid debt in form aforeſaid, whoſe date is the ſame day and year aforeſaid, as the *letters teſtamentary* of the ſaid *J.* whereby it

Breach.

Profert *of the bond.*

And probate.

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* *Hæres non tenetur in Anglia ad delita anteceſſoris reddenda, niſi per anteceſſorem ad hoc fuerit obligatus; præterquam debita regis tantum.* Fleta, lib. 2. c. 55. Briton 65. b. 11 H. 6. 48.

appears to the court here, that the ſaid *S.* is executrix of the laſt will and teſtament of the ſaid *J.* and thereof has the adminiſtration, *&c.*

Plea, riens per diſcent tempore impetrationis brevis originalis.

And the ſaid *J.* by *T. S.* his attorney, comes and defends the wrong and injury when, *&c.* and ſays, that he ought not to be charged with the debt aforeſaid as brother and heir of the ſaid *H.* by virtue of the ſaid writing, becauſe proteſting that the writing aforeſaid is not the deed of the ſaid *H.* and for plea ſaith, that he hath not any lands or tenements by deſcent as heir to the ſaid *H.* in fee-ſimple, nor had on the day of obtaining the original writ of the ſaid *S.* nor at any time ſince; and this he is ready to verify: Wherefore he prays judgment, if he ought to be charged with the debt aforeſaid as brother and heir of the ſaid *H.* by virtue of the writing aforeſaid.

Stat. 3 & 4 W. & M. c. 14. 5 Mod. 122. Redſhaw *and* Heſter. Jeffry *and* Barrow. Paſ. 10 Ann. 10 Mod. 18.

Geo. Wilſon.

Replication, qu' il ad aſſets.

And the ſaid *S.* ſaith, that by any thing by the ſaid *J.* above in pleading alledged, ſhe ought not to be precluded from having her ſaid action againſt him; becauſe ſhe ſays, that before the day of obtaining her ſaid original writ, *to wit*, on the third day of *April* in the thirteenth year of the reign of our ſaid lord the now king, the ſaid *J.* had ſufficient lands and tenements by deſcent as heir to the ſaid *H.* in fee-ſimple, whereout he might have ſatisfied the ſaid *S.* the debt and damages aforeſaid, *to wit*, at *London* aforeſaid in the pariſh and ward aforeſaid;

ſaid; and this ſhe is ready to verify: Wherefore ſhe prays judgment, and that the ſaid debt, together with the damages by means of the detention of the ſaid debt, may be adjudged unto her, *&c.*

John Glynn.

Rejoinder.

And the ſaid *J.* ſaith, that before the day of obtaining the ſaid original writ of the ſaid *S.* he had not ſufficient lands and tenements by deſcent, as heir to the ſaid *H.* in fee-ſimple, whereout he might have ſatisfied the ſaid *S.* the debt and damages aforeſaid, or any part thereof, as the ſaid *S.* hath in replying above alledged; and of this he puts himſelf on the country, *&c.* And the ſaid *J.* doth ſo likewiſe, *&c.*

Iſſue.

Debt on bond by the executor of the obligee againſt the heirs and deviſees of the obligor.
Lil. Ent. 529.

Surrey, to wit, *J. A.* late of the pariſh of *St. Andrew, Holborn*, in the county of *Middleſex*, merchant, and *J.* his wife, and *A. M.* late of the ſame pariſh, in the county aforeſaid, gent. and *E.* his wife, and *E. B.* late of *Guildford*, in the county of *Surrey*, widow, which ſaid *J. E.* and *E.* and one *A. C.* now deceaſed, whom the ſaid *J. E.* and *E.* have ſurvived, were daughters and co-heireſſes of *C. C.* otherwiſe lately called *C. C.* of *Crawley* in the county of *Surrey*, gent. and deviſees of divers lands and tenements, of which the ſaid *C.* died ſeiſed in his demeſne of fee, *R. R* late of in the county of *Suſſex*, *T. B.* late of in the county of *Suſſex*, yeoman, and *J. M.* late of *Cranley* in the county of *Suſſex*, yeoman, ſurviving deviſees of a manor, and of divers

divers lands and tenements whereof the ſaid *C.* died ſeiſed, by the ſaid *C.* by his laſt will deviſed to the ſaid *R. B. T. B.* and *J. M.* and to one *R. H.* late of *Haſcombe* in the county of *Suſſex*, and now deceaſed, and whom the ſaid *R. T.* and *J.* ſurvived, were ſummoned to anſwer *H. T.* executor of the teſtament of *J. T.* of a plea, that they render to him ſixty pounds, which they unjuſtly detain from him, *&c.* And whereupon the ſaid *H.* by *J. C.* his attorney, ſays, that whereas the ſaid *C.* father of the ſaid *J. E. A.* and *E.* whoſe ſurviving heirs and deviſees they the ſaid *J. E.* and *E.* are in the life-time of the ſaid *C.* to wit, on the twenty-ninth day of *September* in the fourth year of the reign of his late majeſty *James* the ſecond, late king of *England*, &c. at *Guildford* in the county of *Surrey*, by his writing obligatory, ſealed with the ſeal of the ſaid *H.* and to the court of our ſaid lord the now king here ſhewn, the date whereof is on the day and year aforeſaid, acknowledged himſelf to be bound to the ſaid *J. H.* in his life-time in the ſaid ſixty pounds, to be paid to him when he ſhould be thereunto required; and to the ſaid payment well and truly to be made the ſaid *C.* in his life-time bound himſelf and his heirs by the ſaid writing: *And whereas* the ſaid *C.* was in his life-time ſeiſed in his demeſne as of fee, of and in the manor and ſeveral tenements and premiſſes, with the appurtenances, in the ſaid county here after particularly mentioned to be deviſed; *And* being ſo ſeiſed thereof the ſaid *C.* after the

Obligor ſeiſed.

Made his will.

the twenty-fifth day of *March* in the year of our Lord one thousand six hundred and ninety-two, *to wit*, on the eleventh day of *January* in the year of our Lord one thousand six hundred and ninety-four, at *Guildford* aforesaid, made his testament in writing; *And by the* same testament gave and bequeathed to the said *R. H.* now deceased, *R. B. T. B.* and *J. M.* and their heirs, the manor, messuage or tenement, farm, lands, meadow, pasture, feeding, woods, rents, tenements, and hereditaments whatsoever, with the appurtenances, called or known by the name of *Woodham*, situate within the parish of *Chertsey* in the said county of *Surrey*; and by his said testament gave and bequeathed to the said *R. H. R. B. T. B.* and *J. M.* and their heirs, one messuage and divers lands with the appurtenances, known by the name of *Stubbs*, parcel of *New Park* in *Cranley* in the county of *Surrey* aforesaid; and also by his said testament gave and bequeathed to the said *E. E. A.* and *J.* their heirs and assigns, one messuage, and divers lands and hereditaments called *New Park* in *Cranley* aforesaid; *And afterwards*, to wit, on the first day of *March* in the year of our Lord one thousand six hundred and ninety-four aforesaid, at *Guildford* aforesaid, died seised of such his estate of and in the manor, messuages, lands and tenements aforesaid, with the appurtenances, so as aforesaid respectively devised; *After* whose death, and before the day of suing out the original writ of the said *H.* to wit, on the same day and year last mentioned, at

Devised to defendants.

Obligor dies.

Defendants agree to the legacies;

Guilford aforesaid, the said *J. E. A.* and *E. R. H. R. B. T. B.* and *J. M.* agreed to their said legacies so as aforesaid respectively devised to them, and were respectively seised of the manor, messuages, lands and tenements aforesaid so devised to them as aforesaid, by virtue of the several devises aforesaid: *Yet* the said *C.* in his life-time, or the said *J. E. A.* and *E.* in the life-time of the said *A.* or the said *R. H. R. B. T. B.* and *J. M.* in the life-time of the said *R. H.* or the said *J. E. E. R. B T. B.* and *J. M.* after the several deaths of the said *C. A.* and *R. H.* although often required, have not rendered, nor has any one of them rendered the said sixty pounds to the said *J. H.* in his life-time, or to the said *H.* after his death, but intirely refuseth to render the same to the said *J. H.* in his life-time, and to the said *H.* after his death; and the said *J. E.* and *E. R. B. T. B.* and *J. M.* after the several deaths of the said *C. A.* and *R. H.* have hitherto intirely refused to render the same to the said *H.* after the death of the said *J. H.* and still do refuse, and unjustly detain the same: Wherefore he says that he is injured, and has damage to the value of twenty pounds: And thereupon he brings suit, &c. *And* the said *H.* brings here into court as well the said writing which testifies the said debt in form aforesaid, the date whereof is on the said, &c. As also the said letters testamentary of the said *J. H.* by which it sufficiently appears to the court that the said *H.* is the executor

And are seised, &c.

Breach.

Profert of the bond;

And probate.

cutor of the ſaid teſtament of the ſaid *J. H.* and thereof has adminiſtration, *&c.*

Declaration in debt on the ſtatute of 2 & 3 Ed. 6. c. 13. *for not ſetting forth tithes of* Sylva cædua. Lil. Ent. 148.

Kent, *to wit,* *J. A.* late of in the ſaid county, yeoman, was ſummoned to anſwer *F. P.* of a plea, that he render to him nine pounds eighteen ſhillings and nine-pence of lawful money of *Great Britain*, which he owes to him and unjuſtly detains, *&c.* And whereupon the ſaid *F.* by his attorney ſays, that whereas the ſaid *F.* now is, and for divers, *to wit*, three years and more laſt paſt, was vicar of the vicarage of the pariſh church of *G.* in the ſaid county of *Kent*. And whereas the ſaid *J.* now, and during all the time laſt mentioned was poſſeſſor and occupier of a large quantity, *to wit*, five acres of woodland, with the appurtenances, lying and being in the pariſh of *G.* aforeſaid, and within the bounds, limits and tithable places of that pariſh. And whereas the tithe of all wood being *ſylva cædua*, and under the age or growth of twenty years, ariſing or coming on or from the ſaid five acres of woodland, with the appurtenances, cut down for ſale thereof within forty years next before the fourth day of *November* in the ſecond year of the reign of the late king *Edward* the VI. and on the ſame day and year laſt mentioned, was of right due and payable to the vicar of the vicarage aforeſaid, or to his farmer for the time being, in its proper kind and

and ſpecies: And whereas the ſaid *J.* being ſo poſſeſſed of the ſaid five acres of wood-land as aforeſaid, and being the occupier thereof; and the ſaid *F.* being vicar of the ſaid vicarage; he the ſaid *J.* within the ſpace of three years now laſt paſt, cut down great quantities of wood there growing upon the ſaid five acres of wood-land, and being *ſylva cædua*, and under the age of twenty years, for ſale thereof, the tithe of which ſaid wood ſo growing on the ſaid five acres of wood-land as aforeſaid, and cut down for ſale thereof, did of right belong, and was due and payable to the ſaid *F.* as being vicar of the ſaid vicarage, in its proper kind and ſpecies, and of right ought to have been rendered and paid to him: Nevertheleſs the ſaid *J.* being a ſubject of this kingdom, and all and ſingular the premiſſes well knowing, after the cutting down of the ſaid wood being *ſylva cædua*, and under the age or growth of twenty years, for ſale as aforeſaid, that is to ſay, on the firſt day of *May* in the year of our Lord 1740, took and carried away the ſaid wood from the places where the ſame was ſo cut down, and where the ſame ought to have been tithed, the tenth part thereof not being ſeparated, divided or ſet out by the ſaid *J.* from the nine parts reſidue thereof, nor any agreement or compoſition made by the ſaid *J.* with the ſaid *F.* for the tithe thereof, contrary to the form of the ſtatute in that caſe made and provided. And the ſaid *F.* avers, that the tenth part of the ſaid wood,

wood, from the other nine parts residue thereof so as aforesaid not divided or set out, and by him the said *J.* so as aforesaid taken and carried away, at the time of taking and carrying away thereof was of the value of three pounds six shillings and three pence of lawful money of this kingdom; by reason whereof an action hath accrued to the said *F.* to require and have from the said *J.* the sum of nine pounds eighteen shillings and nine pence, that is to say, treble the value of the tithe of the said wood by the said *J.* not separated, divided or set out from the nine parts residue thereof, and contrary to the form of the said statute taken and carried away: *Nevertheless* the said *J.* although often required, the aforesaid nine pounds eighteen shillings and nine pence to the said *F.* hath not rendered, but the same to him to render hath hitherto refused, and doth yet refuse, to the damage of the said *F.* of ten pounds; and thereof he brings suit, &c.

Demurrer.

Demurrer to a conusance in replevin.

AND the said *J. L.* saith, that the conusance of the said *J. C.* of the taking of the cattle, goods and chattels aforesaid of him the said *J. L.* in the said place in which, &c. as bailiffs of the said *T. D.* and the matter therein contained, are insufficient in law to maintain him the said *J. C.* to acknowledge the taking of the said cattle, goods and chattels in the said place in which, &c. to be

be just, and that he the said *J. L.* needeth not, neither by the law of the land is he bound to answer to the said conusance in manner and form aforesaid made and pleaded; and this he is ready to verify: Wherefore for default of a sufficient conusance in this behalf, he the said *J. L.* prayeth judgment, and his damages, by means of the taking and unjust detention of the said cattle, goods and chattels, to be adjudged unto him, &c. And for causes of demurrer in law upon the said conusance, he the said *J. L.* according to the form of the statute in such case lately made and provided, sheweth to the court here the following causes, *to wit*, that the said *J. C.* in and by his said conusance hath not averred or shewn, that the said yearly rent of 4*l.* or any part thereof, was due and in arrear at the time in which the said cattle, goods and chattels were so taken as aforesaid; and for that the said *J. C.* in and by his said conusance hath not averred or shewn that *E. J.* in the said conusance named, is dead; and for that the said conusance is uncertain and wanteth form, &c.

Causes of demurrer.

J. Foster.

Demurrer to evidence at Nisi prius.

And the jurors of the jury, whereof mention is within made, being demanded, also came, who to speak the truth of the within contained were chosen, tried and sworn; upon which the said *A.* by one *L. P.* serjeant at law, then of the council of the said *A.* in maintenance of the issue within joined, before

fore the said justices of assize shewed in evidence to the said jurors, and said that, *&c.*

And the said *S.* by one *R. B.* then of his council saith, that the evidence and allegations aforesaid, above-alledged on the behalf of the said *A.* are not sufficient in law to maintain the said issue, to which he hath no need, nor is he bound by the law of the land to answer. Wherefore for default of sufficient evidence in this behalf, he prayeth that the said jurors may be discharged from giving their verdict in the premisses; and that the said *A.* may be precluded from having his said action against him the said *S.* *&c.*

Joinder in demurrer.

And the said *A.* for that he hath shewn sufficient matter in maintenance of the said issue in evidence to the said jurors, which matter the said *S.* doth not deny, nor in any manner answer thereto, prayeth judgment, and that the said jurors thereof may be discharged; and that the said *S.* may be convicted of the premisses, *&c.* *Whereupon* the said jurors by the court here are discharged of the premisses. *And* day is thereupon given to the said parties before the justices within written at *Westminster*, from the morrow of *All Souls* within written, to hear their judgment thereupon, *&c.*

Jurors discharged.

Day in C. B. given.

Demurrer to writ and declaration.

And the said *R. D.* by *T. C.* his attorney cometh and defendeth the force and injury when, *&c.* and craveth oyer of the said writ of our lord the king of privilege; and it is read to him in these words, *to wit*, *George* III. *&c.* Witness, *&c.* Which being read and heard, the said *R.* prayeth judgment of the

Oyer of the writ of privilege.

writ and declaration of him the ſaid *W. O. B.* aforeſaid; becauſe he ſaith, that the ſaid writ and declaration thereupon aforeſaid in manner and form aforeſaid made and declared, and the matter in them contained, are not ſufficient in the law for the ſaid *W.* his action aforeſaid againſt him the ſaid *R.* to have and maintain, to which ſaid writ and declaration in manner and form aforeſaid made and declared, he hath no need, nor by the law of the realm is held or obliged in any manner to anſwer; and this he is ready to verify: Whereſore for want of a ſufficient writ and declaration in this behalf, the ſaid *R.* prayeth judgment, and that the ſaid *W.* from his action aforeſaid may be debarred, &c. *And* for cauſes of demurrer in law in this behalf, he the ſaid *R.* according to the form of the ſtatutes in ſuch like caſes made and provided, ſheweth to the court theſe following, that is to ſay, for this, that it appeareth to the court that the ſame writ of our ſaid lord the king of privilege was had and ſued out upon the ſaid 3d day of *July* in the 8th year of the reign of our ſaid lord the king; which day of ſuing out thereof was before the day on which the ſaid *W.* has in his ſaid declaration thereupon alledged and declared, that the treſpaſſes, aſſaults, batteries, woundings and impriſonments, charged upon him the ſaid *R.* in and by the ſaid declaration, were done and committed; and alſo for this, that between the ſaid writ and declaration are diverſe variances; and alſo for this, that the ſaid declaration in form aforeſaid made

Cauſes of demurrer.

Writ teſted before the cauſe of action laid in the declaration.

and declared, is in itself repugnant, insensible, contradictory, and wanteth form, *&c.* *And* hereupon the said *R. D.* demandeth the aforesaid *W. O. B.* to join in demurrer with him the said *R.* And hereupon a day is given by the court of our said lord the king of the bench here to the said *W.* before his majesty's justices at *Westminster*, until —— next after —— to join in the said demurrer in law with the said *R.* And the said *W.* at the same day being solemnly required came not, neither is his writ of our said lord the king of privilege aforesaid against the said *R.* further prosecuted, but made default. *Therefore* it is considered, that the said *W.* take nothing by his said writ, but that he and his pledges to prosecute, *to wit*, *J. D.* and *R. R.* be therefore in mercy; and that the said *R.* do go thereof without day, *&c.* And further it is considered by the court here, that the said *R.* recover against the said *W.* 3*l.* 16*s.* 8*d.* for his expences and costs by him about his defence in this part sustained, to the said *R.* by the court here, according to the form of the statute in such case lately made and provided, adjudged, *&c.* And that the said *R.* have his execution for the same, *&c.*

Judgment for the defendant for default of the plaintiff's joining in demurrer.

And the said *E. H.* saith, that the said plea of him the said *T. S.* in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to bar the said *E.* from having his said action against him the said *T.* and that he the said *E.* hath no need, nor is he obliged by

Demurrer to a plea of Nil debet *to a declaration of debt on a bail-bond.*

the law of the land to answer the said plea of him the said *T.* in manner and form abovesaid above pleaded; and this he is ready to verify: Wherefore for want of a sufficient plea in this behalf, the said *E.* prayeth judgment, and that his said debt, together with his damages by reason of the detaining of the debt, may be adjudged to him, *&c.* *And* for causes of demurring in law in this behalf, the said *E. H.* according to the form of the statute in such cases made and provided, sheweth to the court here these causes following, (that is to say) For this, that the said *T. S.* hath not by his said plea particularly denied nor confessed the said deed in the said declaration alledged; and also for this, that the said *T.* is estopped by the said deed to say that he doth not owe the money in the said deed mentioned; and ought to have shewn by his plea, how he is discharged from the same

Joinder. *And* the said *T. S.* saith, that the said plea by him the said *T.* in manner and form aforesaid pleaded, and the matter therein contained, are good and sufficient in the law to bar the said *E.* from having his said action against him the said *T.* which said plea, and the matter therein contained, he the said *T.* is ready to verify; and because the said *E.* to the said plea hath not answered, nor the same hitherto in any manner gainsaid, he the said *T.* doth pray judgment, and that he the said *E.* may be barred from having against him the said *T.* his action aforesaid, *&c.*

Ejectment

Ejectment.

Yorkshire, *to wit*, A. B. late of, *&c.* was attached to answer *C. D.* in a plea, wherefore with force and arms he entered into 500 acres of land, *&c.* in the parish of *S.* in the county aforesaid, which *E. F.* demised to the said *C.* for a term of years which is not yet expired, and into 500 other acres, *&c.* in the parish of *S.* aforesaid in the county aforesaid, which *G. H.* demised to the said *C.* for a term of years which is not yet expired, and ejected him from his said several farms, and other wrongs to him did, to the great damage of the said *C.* and against the peace of our lord the now king, *&c. and* whereupon the said *C.* by *W. R.* his attorney complaineth, *That whereas* the said *E.* on the —— day of —— in the —— year of the reign of the said lord the king at the castle of *Y.* aforesaid, had demised to the said *C.* the tenements aforesaid first above mentioned, with the appurtenances, to have and to hold the same tenements first above mentioned, with the appurtenances, to the said *C.* and his assigns, from the —— day of —— then last past to the full end and term of —— years from thence next following, and fully to be complete and ended. *And whereas* also the said *G.* on the same —— day of —— in the said —— year of the reign of the said lord the king, at the castle of *Y.* aforesaid, had demised to the said *C.* the tenements aforesaid

Declaration in trespass and ejectment on a double demise.

First demise.

Second demise.

aforesaid last above mentioned, with the appurtenances, to have and to hold the same tenements last above mentioned, with the appurtenances, to the said *C.* and his assigns, from the said —— day of —— then last past, to the full end and term of —— from thence next following, and fully to be complete and ended. *By virtue* of which said several demises, the said *C.* entered into the several tenements aforesaid, with the appurtenances, and was possessed thereof. *And* the said *C.* being so possessed thereof, the said *W.* afterwards, that is to say, on the —— day of —— in the —— year of the reign of the said lord the king, with force and arms, that is to say, with swords, staves and knives, entered into the said several tenements above specified, with the appurtenances, respectively, demised to the said *C.* in manner aforesaid, in and upon the possession of the said *C.* thereof, and ejected the said *C.* out of his said several farms, his said several terms therein not being ended, and other enormities, *&c.* to the great damage, *&c.* and against the peace, *&c.* Whereupon the said *C.* saith, that he is injured and endamaged to the value of 10*l.* and thereof he bringeth suit, *&c.*

J. K. L. M. &c.

Notice to the tenants.

I am informed, that you are in possession of, or claim title to the premisses in this declaration of ejectment mentioned, or to some part thereof. And I, being sued in this action as a casual ejector, and having no claim or title to the same, do advise you to appear

pear in —— term next in his majesty's court of common bench at *Westminster*, by some attorney of that court, and then and there, by rule of the same court, to cause yourselves to be made defendants in my stead; otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession. I am

Your loving friend,

A. B.

Easter *term in the thirteenth year of*, &c.

Declaration in ejectment of a messuage and the moiety of a messuage on the demise of the wardens and poor of the hospital of the Holy Trinity *in* Croydon.

N. *to wit*, W. C. late of *London*, gent. was attached to answer *J. M.* gent. of a plea, wherefore with force and arms he entered into two messuages, and the moiety of one messuage, with the appurtenances, in the town of *N.* which the wardens and poor of the hospital of the Holy *Trinity* in the county of *Surrey* had demised to the said *J.* for a term, which is not yet passed, and ejected him from his said farm, and did other injuries to him, to the great damage of the said *J.* and against the peace of our lady the present queen; and wherefore the said *J.* by *H. C.* his attorney, complains, that whereas the said wardens and poor on the nineteenth day of *March* in the thirteenth year of the reign of our sovereign lady *Anne*, by the grace of God, queen of *Great Britain*, &c. at the town of *N.* had

 demised

demifed to the faid *J.* the tenements aforefaid, with the appurtenances, to hold and occupy the faid tenements, with the appurtenances, to the faid *J.* and his affigns, from the eighteenth day of the fame *March* unto the end and term of ten years thence next following, and fully to be complete and ended; by virtue of which demife the faid *J.* entered into the faid tenement, with the appurtenances, and was poffeffed thereof; and the faid *J.* being fo poffeffed thereof, the faid *W.* afterwards, *to wit*, on the twenty-fecond day of *March* aforefaid in the thirteenth year aforefaid, with force and arms, *&c.* entered into the faid tenements, with the appurtenances, which the faid wardens and poor had demifed to the faid *J.* in form aforefaid for a term which is not yet paffed, and ejected the faid *J.* from his faid farm, and did other injuries, *&c.* to the great damage, *&c.* and againft the peace, *&c.* Wherefore he fays that he is injured, and has damage to the value of 40*l.* and therefore brings fuit, *&c.*

Mr. *I. R.*

Notice to tenant in possession.

I AM informed, that you are in poffeffion, or claim title to the premiffes in this declaration of ejectment mentioned, or to fome part thereof; and I being fued in this action as a cafual ejector, and having no claim or title to the fame, do advife you to appear the firft day of next *Trinity* term in

in her majesty's court of common bench at *Westminster* by some attorney of that court, and then and there by rule of the same court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession.

I am,

Your loving friend,

5 May —— *W. C.*

Error.

Pleas inrolled at Westminster *before Sir* T. R. *knt. and his brethren, justices of his majesty's court of common bench of the term of St.* Michael *in the tenth year of the reign of our sovereign lord* George *the second, by the grace of God, of* Great Britain, France, *and* Ireland, *king, defender of the faith,* &c.

Roll 1064.

Midd. *J. D.* late of *Sheer-lane* in the county aforesaid, gent. was summoned to answer *T. K.* of a plea, that he render to him 50 *l.* of lawful money of *Great Britain*, which he owes to and unjustly detains from him, *&c.* and thereupon the said *T.* by *W. M.* his attorney, says, that whereas the said *J.* heretofore, that is to say, in *Michaelmas* term in the eighth year of the reign of our lord the now king in his own proper person came into his majesty's court here before

Declaration in debt on a recognizance of bail.

fore Sir *R. E.* knt. and his companions, then his ſaid majeſty's juſtices of the bench here at *Weſtminſter* in the ſaid county of *Middleſex*; and then in the ſame court here did acknowledge himſelf to owe to the ſaid *T.* the ſum of fifty pounds, which ſaid ſum of fifty pounds the ſaid *J.* for himſelf and his heirs willed and granted to be made of his goods and chattels, and to be levied to the uſe of the ſaid *T.* upon condition, that if judgment in the ſaid court here, in a certain plea of treſpaſs upon the caſe, on promiſe, for the ſaid *T.* againſt one *G. L.* late of St. *Andrew's Holbourn*, goldſmith, ſhould happen to be given, then the ſaid *G.* ſhould ſatisfy to the ſaid *T.* all the damages which ſhould be adjudged to the ſaid *T.* againſt the ſaid *G.* in the ſaid court here, in the ſaid plea of treſpaſs upon the caſe, or render his body on that occaſion to the priſon of the *Fleet*, as by the record thereof in the ſaid court here at *Weſtminſter* aforeſaid remaining may more fully appear: *And whereas* judgment for the ſaid *T.* in the ſaid plea of treſpaſs upon the caſe againſt the ſaid *G.* by the name of *G. L.* late of St. *Andrew's Holbourn* in the county aforeſaid, goldſmith, afterwards in *Trinity* term in the eighth and ninth years of the reign of our ſaid lord the king, was given in the ſaid court of the bench here before Sir *R. E.* knt. and his companions then his majeſty's juſtices of the bench here, *to wit*, at *Weſtminſter* aforeſaid; and the ſaid *T.* then and there by conſideration of the ſaid court recovered againſt the ſaid *G.* forty pounds, which to the ſaid *T.* in the ſaid court here

Recognizance.

The condition.

Judgment againſt the principal.

here were adjudged for his damages which he had sustained by reason of not performing of certain promises and undertakings made to the said *T.* by the said *G.* at *Westminster* in the county of *Middlesex* aforesaid, of which the said *G.* is convicted, as by the record and proceedings thereof in the said court here at *Westminster* aforesaid remaining doth more fully appear. *And* the said *T.* doth aver, that the said *G.* hath not yet satisfied the said *T.* the said forty pounds for his damages aforesaid by him the said *T.* against the said *G.* so as aforesaid recovered, or any part thereof, nor rendered his body to the said prison of the *Fleet*, on that occasion, according to the form and effect of the condition of the said recognizance; and that he the said *T.* hath not yet obtained any execution of the said judgment, and that the said *T.* hath not yet sued out any execution against the said *J.* upon the said recognizance, and that the said judgment recovered in form aforesaid yet remains in its full force and effect, not in the least reversed or satisfied, and that the said recognizance acknowledged in form aforesaid still remains in its full force and effect, not vacated or satisfied; whereby an action hath accrued to the said *T.* to demand and have of the said *J.* the said fifty pounds, according to the form and effect of the said recognizance: Nevertheless the said *J.* (although often requested) hath not yet paid the said fifty pounds, or any part thereof, to the said *T.* but he to pay the same to him hitherto altogether hath, and still doth wholly refuse,

Damages not paid, nor principal rendered.

to the ſaid *T.* his damage of ten pounds; and therefore he brings ſuit, *&c.*

Plea nil debet. *And* the aforeſaid *J.* by *J. B.* his attorney, comes and defends the force and the wrong, when, *&c.* and ſaith, that he doth not owe the aforeſaid *T.* the aforeſaid fifty pounds, nor any ſum of money, in the form in which the ſaid *T.* above againſt him hath declared; and of this he puts himſelf upon the country.

Demurrer. *And* the ſaid *T.* ſays, that the ſaid plea of the ſaid *J.* in manner and form as the ſame is pleaded, and the matter therein contained, are not ſufficient in law to bar the ſaid *T.* from having his ſaid action maintained againſt the ſaid *J.* and that he the ſaid *T.* has no occaſion, neither is he bound by the law of the land to anſwer to the ſaid plea in manner and form as the ſame is pleaded; and this he is ready to verify: Wherefore for want of a ſufficient plea in this particular the ſaid *T.* prays judgment and his aforeſaid debt, together with his damages, on occaſion of detaining the aforeſaid debt, to be adjudged to him, *&c.* and for cauſes of demurrer in law to the ſaid plea, the ſaid *T.* according to the form of the ſtatute in ſuch caſe made and provided, ſhews to this court here theſe cauſes following, *to wit*, for that the ſaid *J.* by the ſaid plea neither admits nor denies the ſeveral records mentioned in the above declaration of the ſaid *T.* and alſo for that the ſaid *J.* by his ſaid plea hath endeavoured to put matters of record in iſſue to be tried by the country; and for that the ſaid plea is uncertain, inſufficient, and wants form, *&c.*

J. Agar.

And the said *J.* although solemnly called on to join in demurrer to the said demurrer in law of the said *T.* cometh not, but maketh default: therefore it is considered, that the said *T.* recover against the said *J.* his debt aforesaid, and also ten pounds for his damages which he hath sustained on occasion of the detaining of that debt, adjudged to the said *T.* with his consent by his majesty's court here; and the said *J.* is at the mercy, *&c.*

Judgment for not joining in demurrer.

Signed 28 Oct. 1736.

Mercy.

Afterwards, *to wit*, on *Wednesday* next after the morrow of *All-Souls* in this same term, comes the aforesaid *J. D.* before our lord the king at *Westminster*, by *S. R.* his attorney, and saith, that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, that is to say, that the declaration aforesaid, and the matter in the same contained, are not sufficient in law for the said *T. K.* to maintain his said action against the said *J. D.* There is also error in this, that by the said record it appears, that the judgment aforesaid in the plea aforesaid, in form aforesaid given, was given for the said *T.* against the said *J.* when by the law of the land of this kingdom of *Great Britain*, that judgment ought to have been given for the said *J.* against the said *T.* There is error also in this, that there is no original writ between the parties aforesaid of the plea aforesaid, in the aforesaid court of common bench, filed or remaining of record in the custody of the keeper of the writs and rolls of the said court of common bench of the said lord the king, to warrant the judgment and declaration aforesaid in the record

Errors assigned.

No original.

cord

cord aforesaid, and therefore in that it is manifestly erroneous: Whereupon the said *J.* prays a writ of our said lord the king of *certiorari*, to be directed to the right honourable *G. H.* earl of *Litchfield*, keeper of the writs and rolls of the said court of the bench of the said lord the king, to certify to the said lord the king more fully the truth of the same; and it is granted to him, *&c.* The said *J.* also prays that the judgment aforesaid, for the errors aforesaid, and other the errors in the record and proceedings aforesaid being, may be reversed, annulled and held intirely for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment; and also that the said *T.* may rejoin to these errors. *W. Browne.*

Certiorari *to the* custos brevium *prayed.*

Award of certiorari.

Wherefore *G. H.* earl of *Litchfield*, keeper of the writs and rolls of the court of our lord the king of the common bench, is commanded that he search the original writs of our said lord the king, directed to the sheriff of *Middlesex* of the term of St. *Michael* in the tenth year of the reign of our said lord the king, and filed of record in his custody, and what he shall find therein of an original writ, between the parties aforesaid, of the plea aforesaid, together with the return and indorsement thereof, as fully and intirely as the same remains in his custody, he do certify without delay to our said lord the king wheresoever, *&c.* together with the said writ directed to him in that behalf. *But* the said keeper of the writs and rolls hath not returned the said writ directed to him as aforesaid,

Custos brevium non misit breve.

said, nor hath done any thing therein. *And* hereupon the said *T. K.* in his proper person voluntarily comes here into court, and having heard the errors aforesaid, forthwith saith that neither in the record and proceedings aforesaid, nor in giving the judgment aforesaid, is there any error; and prays, that the court of our lord the king now here would proceed to the examination as well of the record and proceedings aforesaid, as of the matters above assigned for error: And that the judgment aforesaid may be affirmed. *But* because the court of our lord the king now here is not yet advised of giving judgment of and upon the premisses, a day is therein given to the parties aforesaid, before our lord the king, until wheresoever *&c.* for hearing judgment thereon, for that the court of our said lord the king now here is not yet advised thereof, *&c.*

Joinder in error.

Continuance by cur' advisar' vult.

Homine * *replegiando.*

Michaelmas *Term in the* 18*th year of king* George *the third.*

Berks, to wit. N. *L.* gent. was attached to answer *W. H.* and *S.* his wife, of a plea, wherefore the said *S.* he took, and

Count in Homine replegiando. See Salk. 5. 705.

* This writ is mentioned as a subsisting remedy in some of the modern books, [See 3 Mod. 120. 3 P. Wil. 154. R. Raym. Eq. Cas. abr.] but the general remedy is by the writ of *Hab. Corp.* at Common Law. *Wynne's* Observ. on Fitzh. Nat. Brev.

taken

Lilly's Ent. 293.

taken holdeth, *&c.* *And whereupon* the said *W.* and *S.* by *H. M.* their attorney complain that the said *N.* on the 20th day of *May* in the 1st year of the reign of our lord the present king at *Wantage* in the county aforesaid, took the said *S.* and her taken still holdeth: Wherefore they say that they are injured, and have damage to the value of 5000 *l.* and thereof they bring, suit, *&c.*

Plea, Non cepit.

And the said *N.* in his proper person cometh and defendeth the force and injury, when, *&c.* and saith, that he did not take the said *S.* in the said declaration mentioned, in manner and form as the said *W. H.* and *S.* his wife above complain against him; and of this he putteth himself upon the country.

Hil. 8 *Geo.* 2 *rot.* 1260. C. B.

Herefordshire, to wit. R. *S.* was attached to answer *W. B.* gent. of a plea, wherefore he took *S.* the wife of the said *W.* and keepeth her taken, *&c.* *and whereupon* the said *W.* by *J. C.* his attorney complaineth that the said *R.* on the 1st day of *June* in the year of our Lord 1734, at the parish of *B.* in the county aforesaid, took the said *S.* the wife of the said *W.* and keepeth her yet taken; whereby he saith, that he is prejudiced and damnified to the value of 500 *l.* and thereof he bringeth suit, *&c.*

Plea *non cepit*; verdict *pro quer.* 100 *l.* damages.

Judgments.

Judgment in case by Nil dicit against one deft. the action being brought against three defts. and two only plead.
3 Mod. 101.
Carth. 19.
Comb. 18, 39.
2 Show. 469.

AND now at this day, *to wit, Saturday* next after the octave of St. *Hilary* in this same term, until which day the said *E. S. T. P.* and *H. M.* had leave to imparl to the said bill, and then to answer, *&c.* before the lord the king at *Westminster* cometh as well the said *G. R.* by his attorney aforesaid, as the said *E.* and *T.* by *R. G.* their attorney, and the said *H.* at the same day, although solemnly demanded, doth not come, neither doth he say any thing thereupon, in bar or preclusion of the action of the said *G.* by which the said *G.* remaineth thereupon against the said *H.* undefended, *&c.* For which it is considered that the said *G.* ought to recover against the said *H.* his damages by occasion of the premisses; *but* because it is not known whether the said *E.* and *J.* may be convicted of the premisses above laid to their charge or not, and if they can be convicted, it is convenient that there should be but one taxation of the said damages; *Therefore* let the inquisition for damages against the said *H.* stay until the plea between the said *G.* and the said *E.* and *T.* be determined in some lawful manner, *&c.* *And* the said *E. S.* and *T. P.* (all and all manner of exceptions as to the said bill being saved to them) defend the wrong and injury. *And* the said *E.* saith, *&c.* (The defendants pleaded severally in abatement the privilege of *C. B.*)

Unica taxatio.

Judgment by Nil dicit *in case* sur assumpf. *at the suit of an attorney.*

And the ſaid *C. K.* by *J. C.* his attorney cometh and defendeth the force and injury, when, &c. and ſaith nothing in bar or preclusion of the aforeſaid action of the ſaid *G. D.* whereby the ſaid *G.* remaineth againſt the ſaid *C.* therein undefended, wherefore the ſaid *G.* ought to recover againſt the ſaid *C.* his damages occaſioned by not performing the promiſes and undertakings aforeſaid: *But* because it is not known what damages the ſaid *G.* has ſuſtained by occaſion of the not performing the promiſes and undertakings aforeſaid; *Therefore* the ſheriff is commanded, that by the oath of 12 honeſt and lawful men of his bailiwic, he diligently inquire what damages the ſaid *G.* has ſuſtained, as well by occaſion of not performing the promiſes and undertakings aforeſaid, as for his coſts and charges by him about his ſuit in this behalf laid out, and the inquiſition which the ſheriff ſhall make thereon, he make appear here on *Monday* next after the octave of St. *Martin*, under his ſeal and the ſeals of thoſe by whoſe oath he ſhall take ſuch inquiſition; *At which day* here cometh the ſaid *G.* in his proper perſon, and the ſheriff, *to wit*, *H. M.* eſq; and *R. H.* eſq; now return here a certain inquiſition taken before him at the court-houſe *Weſtminſter* in the county aforeſaid, the 24th day of *November* in the 14th year of the reign of our lord the now king, by the oath of 12 honeſt and lawful men of his bailiwic; by which it is found, that the ſaid *G.* hath ſuſtained damages by

Inquiry awarded.

The return.

3 occaſion

occasion of the premisses, besides his costs and charges by him about his suit in this behalf laid out, to 31 *l.* 10 *s.* and for those costs and charges to 20 *s.* *Therefore* it is considered, that the said *G.* recover against the said *C.* his damages aforesaid, by the inquisition aforesaid in form aforesaid found to 32 *l.* 10 *s.* and also 10 *l.* 10 *s.* to the said *G.* at his request, for his costs and charges by the court here of increase adjudged, which said damages amount in the whole to 43 *l.* *And* the said *C.* in mercy, *&c.*

Final judgment.

Judgment signed 19 Jan. 1740.

Mercy.

And the said *F.* saith nothing in bar or preclusion of the said action of the said *S.* of the said trespass made in the said tenements newly assigned, whereby the said *S.* remaineth against the said *F.* therein undefended; wherefore the said *S.* ought to recover against the said *F.* his damages by occasion of the said trespass: But because it is not known what damages the said *S.* hath sustained by occasion of the said trespass, the sheriff is commanded, *&c.*

Judgment by Nil dicit *in trespass after a new assignment.*

2 Vent. 49.

And the said *L.* by *R. N.* his attorney cometh and defendeth the force and injury, when, *&c.* and saith nothing in bar of the said action of the said *R.* whereby the said *R.* remaineth against the said *L.* thereof undefended: *Therefore* it is considered, that the said *R.* recover against the said *L.* his said debt, and his damages by the occasion of the detaining of that debt, to 40 *s.* to the said *R.* by his assent by the court here adjudged; and the said *L.* in mercy, *&c.*

Judgment in debt by Nil dicit.

Judgment in debt by Nil dicit *against an attorney, with imparlance.*

And the ſaid *S.* in his proper perſon cometh and defendeth the force and injury, *&c.* and the ſaid *J.* prayeth that the ſaid *S.* may anſwer, and the ſaid *S.* prayeth leave thereupon of imparling here until the octave of St. *Hilary*; and he has, *&c.* the ſame day is given to the ſaid *J.* here, *&c.* *At which day* here came as well the ſaid *J.* by his attorney aforeſaid, as the ſaid *S.* in his proper perſon; and the ſaid *S.* further prayeth leave thereupon of imparling here until fifteen days of *Eaſter*; and he hath, *&c.* the ſame day is given to the ſaid *J.* *&c.* *At which day* here came as well the ſaid *J.* by his attorney aforeſaid, as the ſaid *S.* in his proper perſon; and the ſaid *S.* further prayeth leave thereupon of imparling here until the morrow of the holy *Trinity*; and he hath, *&c.* the ſame day is given to the ſaid *J.* here, *&c.* *At which day*, here came as well the ſaid *J.* by his attorney aforeſaid, as the ſaid *S.* in his proper perſon, and as before the ſaid *J.* prayeth that the ſaid *S.* may anſwer, and the ſaid *S.* as before defendeth the force and injury, *&c.* and ſaith nothing in bar or precluſion of the ſaid action of the ſaid *J.* whereby the ſaid *J.* remaineth againſt the ſaid *S.* therein undefended: *Therefore* it is conſidered that the ſaid *J.* recover againſt the ſaid *S.* his ſaid debt and his damages by the occaſion of the detaining that debt to 30*s.* to the ſaid *J.* by his aſſent, by the court here adjudged. And the ſaid *S.* in mercy, *&c.*

And

And the said *B.* by *W. R.* her attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar or preclusion of the said action of the said *T.* and *D.* whereby the said *T.* and *D.* remain against the said *B.* therein undefended: *Therefore* it is considered, that the said *T.* and *D.* recover against the said *B.* their said debt, and their damages by the occasion of the detaining that debt to 50*s.* to the said *T.* and *D.* by their assent by the court here adjudged, to be levied of the goods and chattels which were of the said earl at the time of his death, being in the hands of the said *B.* to be administered, if she had so much thereof in her hands to be administered; and if she hath not, then the said damages to be levied of the proper goods and chattels of the said *B.* And the said *B.* in mercy, &c.

Judgment in debt by Nil dicit *against an executrix.*

And the said *B.* by *W. R.* her attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar or preclusion of the said action of the said *T.* and *D.* whereby the said *T.* and *D.* remain against the said *B.* therein undefended: *And* hereupon the said *T.* and *D.* freely here in court remit to the said *B.* the said 100*l.* and 400*l.* in the said declaration first demanded, and pray judgment against the said *B.* for the said 100*l.* and 400*l.* in the same declaration last demanded, together with their damages, costs and charges by the occasion of the detaining of the same 100*l.* and 400*l.* to be adjudged to them, &c. *Therefore* it is considered, that the said *T.* and *D.* recover

Judgment in debt by Nil dicit *against an executrix, with a* Remittitur *of part of the debt.*
3 Mod. 153.
Salk. 65.
Comb. 87.

against the ſaid *B.* the ſaid 100*l.* and 400*l.* in the ſaid declaration laſt demanded, and their damages by the occaſion of the detaining of the ſame 100*l.* and 400*l.* to 7*l.* to the ſaid *T.* and *D.* by their aſſent, by the court here adjudged to be levied of the goods and chattels which were of the ſaid earl at the time of his death, being in the hands of the ſaid *D.* to be adminiſtered, if ſhe hath ſo much thereof in her hands to be adminiſtered; and if ſhe hath not, then the ſaid damages to be levied of the proper goods and chattels of the ſaid *B.* And the ſaid *B.* in mercy, &c. *And* that the ſaid *B.* be quit of the ſaid 100*l.* and 400*l.* in the ſaid declaration firſt demanded, &c.

Judgment in ejectment by Nil dicit.

Award of writ of inquiry.

And the ſaid *J.* by *R. B.* his attorney cometh and defendeth the force and injury, when, &c. and ſaith nothing in bar or preclusion of the ſaid action of the ſaid *C.* by which the ſaid *C.* remaineth thereupon undefended againſt the ſaid *J.* *Therefore* it is conſidered that the ſaid *C.* recover againſt the ſaid *J.* his ſaid term yet to come of and in the tenements aforeſaid, with the appurtenances, and his damages by occaſion of the ſaid treſpaſs and ejectment; but becauſe it is unknown what damages the ſaid *C.* hath ſuſtained by occaſion of the treſpaſs and ejectment aforeſaid; *It is commanded* to the ſheriff, that by the oath of 12 good and lawful men of his county he diligently inquire what damages the ſaid *C.* hath ſuſtained as well by occaſion of the treſpaſs and ejectment aforeſaid, as for his coſts and charges by him expended

expended about his ſuit in his behalf; and that the inquiſition which, &c. he make apparent here from the day of *Eaſter* in 15 days, under the ſeal, &c. and the ſeals, &c. The ſame day is given to the ſaid *J.* here, &c. *And* upon this the ſaid *C.* prayeth the writ of our lord the king to be directed to the ſheriff aforeſaid, to cauſe him to have poſſeſſion of his ſaid term yet to come of and in the tenements aforeſaid, with the appurtenances; and it is granted to him, returnable here at the time aforeſaid, &c.

Award of Habere fac. poſſeſſionem.

And the ſaid *W.* by *H. G.* his attorney cometh and defendeth the force and injury, when, &c. and the ſame attorney ſaith, that he is not informed by the ſaid *W.* of any anſwer to be given for the ſaid *W.* to the ſaid *E.* in the ſaid plaint, and he ſaith nothing else thereupon, by which the ſaid *E.* remaineth thereupon undefended againſt the ſaid *W.* [*the reſt is exactly the ſame as in a judgment by* Nil dicit.]

Judgment for the plt. by Non ſum informatus *in caſe ſur aſſumpſit.*

And the ſaid *E.* by *T. K.* his attorney cometh and defendeth the force and injury, when, &c. and the ſaid attorney ſaith, that he is not informed by the ſaid *E.* of any anſwer to be given for the ſaid *E.* to the ſaid *A.* and *B.* in the ſaid plaint; and he ſaith nothing elſe thereupon, whereby the ſaid *A.* and *B.* remain againſt the ſaid *E.* therein undefended: *Therefore* it is conſidered, that the ſaid *A.* and *B.* recover againſt the ſaid *E.* their ſaid debt and their damages by occaſion of the detaining that debt, to 63 *s.* to the ſame *A.* and *B.* by their aſſent by the

Judgment in debt by Non ſum informatus.

court here adjudged. And the ſaid *E.* in mercy, *&c.*

Judgment in ejectment by Non ſum inform.

And the ſaid *H.* by *R. C.* his attorney cometh and defendeth the force and injury, when, *&c.* and the ſame attorney ſaith, that he is not informed by the ſaid *H.* of any anſwer to be given for the ſaid *H.* to the ſaid *G.* in the aforeſaid plaint, and he ſaith nothing elſe thereupon, by which the ſaid *C.* remaineth thereupon undefended againſt the ſaid *H.* *Therefore* it is conſidered, that the ſaid *C.* recover againſt the ſaid *H.* his ſaid term yet to come of and in the manor and tenements aforeſaid, with the appurtenances; *Alſo* the ſaid *C.* ought to recover againſt the ſaid *H.* his damages by occaſion of the treſpaſs and ejectment aforeſaid; but becauſe [*the reſt exactly the ſame as in judgment by* Nil dicit.]

Judgment in debt againſt an executor by Relicta verificat. *after* Plene. adminiſtravit *pleaded.*

At which day come here as well the ſaid *C.* as the ſaid *A.* by their attornies aforeſaid, and hereupon the ſaid *A.* departing from his averment aforeſaid by him above pretended, ſaith, that he cannot gainſay the action aforeſaid of the ſaid *C.* nor that he on the ſaid day of obtaining the original writ of the ſaid *C.* had divers goods and chattels which were the ſaid *T.*'s at the time of his death in his hands to be adminiſtered, to the value of the ſaid debt, whereout he could have ſatisfied the ſaid *C.* for that debt, as the ſaid *A.* hath above alledged: *Therefore* it is conſidered, that the ſaid *C.* recover againſt the ſaid *A.* his debt aforeſaid, to be levied of the goods and chattels which were the ſaid *T.*'s at the time

time of his death, in the hands of the ſaid *A.* to be adminiſtered, and 80 *s*, for his damages by occaſion of detaining that debt, adjudged by the court here to the ſaid *C.* with his aſſent, to be levied alſo of the ſaid goods and chattels, if the ſaid *A.* hath ſo much thereof to be adminiſtered; and if he hath not, then the damages aforeſaid to be levied of the ſaid *A.*'s proper goods and chattels. And the ſaid *A.* in mercy, *&c.*

At which day come here as well the ſaid *C.* as the ſaid *A.* by their attorneys aforeſaid; *And* hereupon the ſame *A.* departing from his averment and proof by him above pretended, ſaith, that he cannot gainſay the action aforeſaid of the ſaid *C.* or that the ſaid *J.* in his life-time undertook in manner and form as the ſaid *C.* above complaineth againſt him; by reaſon whereof the ſaid *C.* ought to recover againſt the ſaid *A.* his damages by occaſion of the non-performance of the promiſes and undertakings aforeſaid: But becauſe it is unknown, *&c.*

Judgment in caſe againſt an executor by Relicta verific. *after* Plene adminiſtravit *pleaded.*

Signed for not paying for the iſſue book.

And the ſaid *L.* in his proper perſon cometh and defendeth the force and injury, when, *&c.* and prayeth leave to imparl here until the morrow of the holy *Trinity*, and he hath it, *&c.* The ſame day is given to the ſaid *J.* here, *&c.* And now here at this day, *to wit*, the ſaid morrow, *&c.* come as well the ſaid *J.* by his attorney aforeſaid, as the ſaid *L.* in his proper perſon; and hereupon the ſaid *J.* prayeth that the ſaid *L.* may anſwer. And the ſaid *L.* as before defendeth the force

Imparlance.

and

Plea, Non est factum.

and injury, when, *&c.* and saith, that he ought not to be charged with the debt aforesaid, by virtue of the writing aforesaid, because he saith, that that writing is not his deed; and of this he putteth himself upon the country; *and* the said *J.* likewise doth the same. *Therefore,* &c. *At which day* come here as well the said *J.* by his said attorney, as the said *L.* in his proper person; and hereupon the said *L.* waiving his plea aforesaid by him above pleaded, saith, that he cannot deny the action of the said *J.* nor but that the said writing is his deed, nor but that he oweth to the aforesaid *J.* the said 200 *l.* in manner and form as the said *J.* hath above declared against him: *Therefore* it is considered, *&c.*

Judgment by Relicta verificatione.

Judgment of Non Pros' *in replevin, for not entering the issue.*

And hereupon the said *B.* although solemnly demanded, cometh not, nor hath he entered his issue aforesaid, neither doth he further prosecute his writ aforesaid; *Therefore* it is considered, that the said *B.* and his pledges for prosecuting thereof be in mercy, *&c.* let the names of the pledges be inquired, *&c.* and that the said *J. S.* go thereof without day, *&c.* and that he have a return of the goods and chattels aforesaid, and in what manner, *&c.* let the sheriff make known hereon.——*And* hereupon the said *J. S.* prayeth that the justices here will at their discretion here in court assess his damages sustained as well by reason of the premisses, as for his costs and charges by him expended about his suit in this behalf: *Whereupon* the said justices here, as well at the prayer of the

said

ſaid *J. S.* as by the conſent of the ſaid *B.* do aſſeſs the damages of him the ſaid *J. S.* ſuſtained as well by reaſon of the premiſſes, as for his ſaid coſts and charges, to ——: *Therefore* it is conſidered, that the ſaid *J. S.* recover againſt the ſaid *B.* his damages aforeſaid aſſeſſed by the juſtices here in form aforeſaid. And the ſaid *B.* in mercy, *&c.*

Judgment for the plt. on a demurrer to a plea in caſe ſur aſſump.

And becauſe the juſtices here will adviſe themſelves of and upon the premiſſes before they give judgment thereupon, day is given to the parties here until from the day of St. *Michael* in three weeks, to hear their judgment thereupon, for that the ſame juſtices are not thereupon, *&c.* *At* which day cometh here as well the ſaid *S.* as the ſaid *N.* by their attornies aforeſaid, and upon this the ſaid premiſſes being ſeen and fully underſtood by the juſtices here, it ſeemeth to the juſtices here, that the ſaid plea of the ſaid *N.* above pleaded in bar, and the matter contained in the ſame, are not ſufficient in law to preclude the ſaid *S.* from having his action againſt the ſaid *N.* as the ſaid *S.* has above alledged; for which the ſaid *S.* ought to recover his damages by occaſion of the premiſſes againſt the ſaid *N.* But becauſe it is not known what damages, *&c.*

Award of inquiry in caſe ſur aſſumpſit. 1 D. 70. p. 7. 3 Mod. 190.

But becauſe it is unknown what damages the ſaid *E.* has ſuſtained by occaſion of the premiſſes, *It is commanded* to the ſheriff, that by the oath of good and lawful men of the county aforeſaid, he diligently inquire what damages the ſaid *E.* hath ſuſtained, as well by occaſion of the premiſſes aforeſaid, as for her

her costs and charges expended by her about her suit in this behalf, and let the sheriff make apparent the inquisition which he shall make thereof to the justices of the lord the king at *Westminster* from the day of *Easter* in 15 days, under his seal and the seals, &c.

Vic. non misit breve.

At which day here cometh the said *E.* by her attorney aforesaid, and the sheriff did nothing therein, neither did he send the writ:

Alias *awarded.*

Therefore, as at first, let there be another writ to him thereupon in form aforesaid, returnable here from the day of the Holy *Trinity* in three weeks, &c. *At which day* here cometh the said *E.* by her attorney aforesaid, and the sheriff, namely Sir *B. T.* knt. and Sir *T. K.* knt. now return here a certain inquisition taken before him at the *Sugar-loaf* in *Hatton-garden* in the county aforesaid, on the 18th day of *June* last past, by the oath of 12, &c. by which it is found, that the said *E.* hath sustained damages by occasion of the premisses, over and above her costs and charges laid out by her about her suit in this behalf, to 200*l.* and for those costs and charges to 20*s.* *Therefore*, &c.

Judgment after two Nihils *on a* Sci-fac. *to revive a former judgment on a* Sci. fac. *upon a recognizance of bail.*

And upon this the said *W. H.* and *A.* pray execution against the said *R. W. E.* and *L.* of the said several sums of money severally acknowledged by them in form aforesaid, according to the form of the judgment of adjudication of execution aforesaid, to be adjudged to them: *Therefore* it is considered, that the said *W. H.* and *A.* have execution against the said *R. W. E.* and *L.* according to the form of the said judgment of adjudication

cation of execution aforesaid, by default, *&c.*

And upon this the said *A.* prayeth execution against the said *R.* and *W.* of the said several sums of 44 *l.* severally acknowledged by them in form aforesaid, and also against the said *L.* of the said 88 *l.* acknowledged by him in form aforesaid, according to the form of the said recognizance: *Therefore* it is considered, that the said *A.* have execution against both of them the said *R.* and *W.* of the said several sums of 44 *l.* severally acknowledged by them in form aforesaid, and against the said *L.* of the said 88 *l.* acknowledged by him in form aforesaid by default, *&c.*

Judgment after two Nihils *on a* Sci. fac. *upon a recognizance of bail.*

Therefore it is considered, that the said *M.* have execution against the said *R.* of the debt and damages aforesaid by default, *&c.*

Judgment after one Nihil *on a* sci. fac. *to receive a judgment in debt.*

Therefore it is considered, that the said *J.* recover against the said *T.* her said debt and her damages aforesaid, assessed by the said jury in form aforesaid to 21 *s.* And also 15 *l.* 6 *s.* to the said *J.* at her request, for her said costs and charges, by the court here of increase adjudged: Which said damages in the whole amount to 16 *l.* 7 *s.* And the said *T.* in mercy, *&c.*

Judgment in debt after verdict for the plaintiff.

And because the justices here are willing to advise themselves of and upon the premisses before they give judgment thereupon, day is given to the said parties here until on the octave of St. *Hilary*, to hear their judgment thereupon, for that the same justices here are not yet, *&c.* *At which day* here came as well

Judgment for the defendant in ejectment, on a special verdict.

well the ſaid *T.* as the ſaid *H.* by their attornies aforeſaid. And becauſe the juſtices here are willing further to adviſe themſelves of and upon the premiſſes before they give judgment thereupon, day is further given to the ſaid parties here until from the day of *Eaſter* in 15 days to hear their judgment thereupon, for that the ſame juſtices here are not yet, &c. *At which day* here came as well the ſaid *T.* as the ſaid *H.* by their attornies, &c. aforeſaid, [*continuances in like manner to the octave of St.* Hil.] *At which day* here came as well the ſaid *T.* as the ſaid *H.* by their attornies aforeſaid; whereupon the premiſſes being ſeen and fully underſtood by the juſtices here, it ſeemeth to the ſame juſtices here, that the ſaid *H.* is in nothing guilty of the treſpaſs and ejectment aforeſaid, as he the ſaid *H.* above in pleading for himſelf hath alledged; *Therefore* it is conſidered, that the ſaid *T.* take nothing by his ſaid writ, but be in mercy for his falſe clamor thereupon; and that the ſaid *H.* go thereof without day, &c. *Alſo* it is conſidered that the ſaid *H.* recover againſt the ſaid *T.* his damages by occaſion of the premiſſes, to 15 *l.* 4 *s.* by the direction of the juſtices here to the ſame *H.* at his requeſt, for his coſts and charges by him in that behalf ſuſtained, according to the form of the ſtatute, &c. by the court here adjudged, &c.

Judgment for the defendant on a verdict upon Non aſſumpſit.

Becauſe as well, &c. *At which day* the jury between the parties aforeſaid in the plea afterwards was thereupon reſpited between them here until to this day, *to wit*, from the day

day of St. *Michael* in three weeks then next following, unless the justices of our sovereign lord and lady the king and queen, assigned to take the assises in the county aforesaid, by form of the statute, &c. should first come on *Monday* the 15th day of *September* next past, at the town of *Huntingdon* in the county aforesaid. And now here at this day the said *J. S.* cometh by his attorney aforesaid, and the said justices of assize, before whom &c. sent here their record in these words; *Afterwards* [*see Posteas.*] *Therefore* it is considered, that the said *J. M.* take nothing by his said writ, but be in mercy for his false clamor thereupon. And that the said *J. S.* go thereupon without day, &c. It is also considered, that the said *J. S.* recover against the said *J. M.* his damages by occasion of the premisses, to 7*l.* by the direction of the justices here adjudged by the court here according to the form of the statute, &c. to the said *J. S.* at his request, for his costs and charges by him sustained in this behalf.

Signed 17 November 2 W. & M.

Because as well, &c. *At which day* the jury between the parties aforesaid in the plea aforesaid was respited thereupon between them here until to this day, *to wit*, from the day of the Holy *Trinity* in three weeks then next following, unless Sir *E. H.* knt. chief justice of our lord the king of the bench here assigned by form of the statute, &c. should first come on *Saturday* the 11th day of *June* next past, at *Westminster* within the hall there commonly called *Westminster-hall*

Judgment for the plaintiff on a verdict upon Non assumpsit.

hall in the county aforeſaid; and now here at this day the ſaid *G.* comes by his attorney aforeſaid. And the ſaid chief juſtice before whom, *&c.* ſent here his record in theſe words, *Afterwards* [*ſee Poſteas.*] *Therefore* it is conſidered, that the ſaid *G.* do recover his ſaid damages againſt the ſaid *R.* to 75 *l.* 5 *s.* aſſeſſed by the ſaid jury in form aforeſaid; and alſo 13 *l.* 15 *s.* adjudged by the court here, to the ſaid *G.* at his requeſt, of increaſe for his ſaid coſts and charges; which ſaid damages in the whole amount to 89 *l.* And the ſaid *R.* in mercy, *&c.*

Signed 29 November 3 Jac. 2.

Judgment in ejectment after verdict for the plaintiff.

And becauſe [*continuance by Cur' adviſare vult*] *At which day* here cometh as well the ſaid *C.* as the ſaid *T.* by their attornies aforeſaid. And upon this the premiſſes being ſeen and fully underſtood by the juſtices here, *It is conſidered*, that the ſaid *C.* recover againſt the ſaid *T.* his ſaid term yet to come of and in the ſaid tenements, with the appurtenances, and his ſaid damages to 40 *s.* 6 *d.* aſſeſſed by the ſaid jury in form aforeſaid. And alſo 7 *l.* 19 *s.* 6 *d.* to the ſaid *C.* at his requeſt, for his ſaid coſts and charges by the court here of increaſe adjudged; which ſaid damages in the whole amount to 10 *l.* and that the ſaid *T.* be taken, *&c.* *And* upon this the ſaid *C.* prayeth the writ of the lord the king to be directed to the ſheriff of the county aforeſaid, to cauſe him to have his poſſeſſion of his ſaid term yet to come of and in the ſaid tenements, with the appurtenances. And it is granted to him returnable

Habere facias poſſeſſionem.

able here from the day of *Easter* in 15 days, *&c.*

Judgment in trespass for the plaintiff, after verdict on Not guilty as to part, and a demurrer to a rejoinder as to the residue; whereupon the jury gave 300l. damages as to the issue in fact, and 200l. contingent damages on the issue in law.

And because [*continuances by cur' advisare vult*] *At which day* here cometh as well the said *G.* as the said *E.* by their attornies aforesaid. Upon which, all and singular the premisses aforesaid being seen and fully understood by the justices here, it seemeth to the same justices that the plea of the said *E.* above in rejoining pleaded in manner and form aforesaid, and the matter in the same contained, are not sufficient in law to preclude the said *G.* from having his said action thereupon, as the said *G.* hath within alledged; *It is considered*, that the said *G.* recover against the said *E.* his said several damages to 500*l.* and the said 40*s.* assessed by the said jury in form aforesaid, and also 28*l.* adjudged by the court here to the said *G.* at his request, of increase, for his said costs and charges, which said damages in the whole amount to 530*l.* And that the said *E.* be taken, *&c.*

Judgment in covenant after verdict for the plaintiff.

Therefore it is considered, that the said *J.* recover against the said *T.* her said damages assessed by the said jury in form aforesaid, to 61*l.* and also 34*l.* 12*s.* 10*d.* to the said *J.* at her request, for her said costs and charges, by the court here of increase adjudged; which said damages in the whole amount to 95*l.* 12*s.* 10*d.* and the said *T.* in mercy, *&c.*

Judgment for the defendants in replevin on a nonsuit.

[The *Postea*] *Therefore* it is considered, that the said *W. C.* and his pledges for prosecuting are in mercy, *&c.* *Quer' nom' pleg'*, *&c.*

Nisi prius.

&c. and that the said *W. B. J. T.* and *C.* go thereof without day, *&c.* and that they have a return of the cattle, *&c.* and in what manner, *&c.* the sheriff make appear here on the octave of St. *Hilary.* *Also* it is considered, that the said *W. B. J. T.* and *C.* recover against the said *W. C.* their said damages assessed by the said jury in form aforesaid to 40*s.* 2*d.* and also 10*l.* 19*s.* 10*d.* to the said *W. B. J. T.* and *C.* at their request for their said costs and charges by the court here of increase adjudged, which said damages in the whole amount to 13*l. &c.*

Postea.

Postea verdict for the plaintiff in case sur assumpsit.

AFterwards (that is to say) on the day and year, and at the place within mentioned, cometh as well the within named *R. L.* by his attorney within named, as the within named *M. U.* in his proper person before Sir *J. W.* knt. the chief justice within named; and the jurors of the jury whereof mention is within made, summoned to be upon that jury, being impanelled and drawn by ballot according to the form of the statute, *&c.* and being called over, came; who to speak the truth of the matters within contained being tried and sworn upon their oath say, that the said *M. U* did undertake and promise in manner and form as the said *R. L.* hath within complained against him; and they assess the damages of the said *R. L.* by reason thereof,

b C. s

besides his costs and charges by him laid out about his suit in this behalf, to 3 *l.* 8 *s.* and for his costs and charges to 10 *s.*

Replevin.

Common Pleas.

Hilary 16 *George the third.*

Declaration in replevin.

Lincolnshire, *to wit*, R. *B.* was summoned to answer to *S. B.* gent. in a plea, wherefore he took the cattle of the said *S.* and unjustly detained the same against sureties and pledges, &c. *And whereupon* the said *S.* by *W. P.* his attorney complaineth, that the said *R.* on the 2d day of *August* in the year of our Lord 1775. at *M.* in the said county in a certain piece of ground there called the *Lord's Meadows*, took the cattle, *to wit* three heifers and nine steers of the said *S.* and unjustly detained the same against sureties and pledges until, &c. whereby the said *S* saith that he is prejudiced and damnified to the value of 50 *l.* and thereof he bringeth suit, &c.

Avowry as lessee for years for damage-feasant.

And the said *R.* by *J. C.* his attorney cometh and defendeth the force and injury when, &c. and well avoweth the taking of the said cattle in the said place in which, &c. and justly, &c. because he saith, that *W.* duke of *P.* before the said time when, &c. was seised of the said piece of ground called

the *Lord's Meadows* in which, *&c.* with the appurtenances in his demeſne as of fee; and being ſo ſeiſed thereof he the ſaid *W.* duke of *P.* long before the time when, *&c.* to wit, on the 1ſt day of *April* in the year of our Lord 1773. at *M.* aforeſaid demiſed the ſaid piece of ground in which, *&c.* with the appurtenances to the ſaid *R.* *To have and to hold* the ſame to the ſaid *R.* from the feaſt of the annunciation of the bleſſed virgin *Mary* then laſt paſt, for and during the term of 21 years from thence next enſuing and fully to be complete and ended. *By virtue* of which ſaid demiſe thereof the ſaid *R.* entered into the ſaid demiſed piece of ground in which, *&c.* with the appurtenances, and at the ſame time when, *&c.* was and ſtill is poſſeſſed thereof by virtue of the ſaid demiſe; and becauſe the ſaid cattle in the ſaid declaration mentioned at the ſaid time when, *&c.* were in the ſaid piece of ground in which, *&c.* eating the corn of the ſaid *R.* there growing, and doing damage there; *Therefore* he the ſaid *R.* well avoweth the taking of the ſaid cattle in the ſaid piece of ground in which, *&c.* and juſtly, *&c.* as a diſtreſs for the ſaid damage; and this he is ready to verify: Wherefore he prayeth judgment and a return of the ſaid cattle, together with his damages, *&c.* according to the form of the ſtatute in ſuch caſe lately made and provided, to be adjudged to him, *&c.*

Bar, right of common in the locus in quo, &c.

And the ſaid *S.* ſaith, that by reaſon of any thing above alledged by the ſaid *R.* he the ſaid *R.* ought not to avow the taking of the

the ſaid cattle in the ſaid place in which, *&c.* to be juſt, becauſe he ſaith, that the ſaid place in which, *&c.* is and from time whereof the memory of man is not to the contrary, hath been parcel of certain grounds called the *Lord's Meadows* in *M* aforeſaid; *and* that he the ſaid *S.* at the ſaid time when, *&c.* and long before was and ſtill is ſeiſed in his demeſne as of fee of 130 acres of land with the appurtenances in *M.* aforeſaid. And the ſaid *S.* and all thoſe whoſe eſtate he hath in his ſaid 130 acres of land with the appurtenances, from time whereof the memory of man is not to the contrary, have had and uſed, and have been accuſtomed, and of right ought to have and uſe common of paſture in the ſaid piece of ground called the *Lord's Meadow*, whereof, *&c.* (his and their own land there excepted) for 37 of their commonable neat beaſts, couchant and levant on the ſaid 130 acres of land of the ſaid *S.* with the appurtenances every year on and from the 1ſt day of *Auguſt* until and upon the 11th day of *November* then next following, as belonging and appertaining to the ſaid 130 acres of land, with the appurtenances: *And* therefore he the ſaid *S.* being ſo ſeiſed of his ſaid 130 acres of land, with the appurtenances as aforeſaid, on the ſaid 2d day of *Auguſt* in which, *&c.* put the ſaid cattle in the ſaid declaration mentioned, being his own commonable neat beaſts, and couchant and levant on his ſaid 130 acres of land, with the appurtenances, into the ſaid

 place

place in which, &c. parcel, &c. to uſe his ſaid common of paſture there. which ſaid cattle were there on that occaſion until the ſaid *R.* in his own wrong, at the ſaid time when, &c took the ſaid cattle in the ſaid place in which, &c. parcel, &c. and unjuſtly detained them againſt ſureties and pledges until, &c. as the ſaid *S.* hath above complained againſt him; and this he is ready to verify; *Wherefore* in as much as the ſaid *R.* hath above acknowledged the taking of the cattle in the ſaid place in which, &c. parcel, &c. he the ſaid *S.* prayeth judgment and his damages by reaſon of the taking and unjuſtly detaining thereof, to be adjudged to him, &c.

Replication. *And* the ſaid *R.* ſaith, that by reaſon of any thing above alledged by the ſaid plea in bar of the ſaid *S.* to the ſaid avowry of the ſaid *R.* he ought not to be barred from having his ſaid avowry, becauſe he ſays, that the ſaid cattle at the ſaid time when, &c. were in the ſaid place in which, &c. by the wrong of the ſaid *S.* eating the corn of the ſaid *R.* there growing, and doing damage there, as the ſaid *R.* hath by his ſaid avowry above alledged; *Traverſe.* *Without this*, that the ſaid *S.* and all thoſe whoſe eſtates he hath in the ſaid 130 acres of land with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and uſed, and have been accuſtomed, and of right ought to have and uſe common of paſture in the ſaid piece of ground called the *Lord's*

Lord's Meadows, whereof, &c. (his and their own land there excepted) for 37 of their commonable neat beasts couchant and levant on the said 130 acres of land of the said *S.* with the appurtenances, every year on and from the 1st day of *August* until and upon the 11th day of *November* then next following, *As* belonging and appertaining to the said 130 acres of land with the appurtenances, in manner and form as the said *S.* hath by his said plea in bar to the said avowry in that respect above alledged; and this he is ready to verify: *Wherefore*, as before he prayeth judgment and a return of the said cattle together with his damages, &c. according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

And the said *S.* saith, as before, that the said *S.* and all those whose estate he hath in the said 130 acres of land with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and used, and have been accustomed, and of right ought to have and use common of pasture in the said piece of ground called the *Lord's Meadows*, &c. (his and their own land there excepted) for 37 of their commonable neat beasts, couchant and levant on the said 130 acres of land of the said *S.* with the appurtenances, every year on and from the 1st day of *August* until and upon the 11th day of *November* then next following, *As* belonging and appertaining to the said 130

Rejoinder.

acres of land with the appurtenances in manner and form as the ſaid *S.* hath by his ſaid plea in bar to the ſaid avowry in that reſpect above alledged; and this he prayeth may be inquired of by the country; *and* the ſaid *R.* doth ſo likewiſe. *Therefore* the ſheriff is commanded that he cauſe to come here in 8 days of the purification of the bleſſed virgin *Mary*, twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* becauſe as well, *&c.*

Iſſue.
Venire.

Hil. 36 *H.* 6. *ro.* 466.

Declaration in replevin
Hob. 16.

Surrey, to wit, Heretofore, as appeareth in the term of St. *Michael* in the 35th year of the reign of our lord the preſent king in the 241 roll it is ſo contained: *J. A.* was ſummoned to anſwer *J. D.* of a plea wherefore he took the cattle of the ſaid *J. D.* and unjuſtly detained them againſt gages and pledges, *&c.* And whereupon the ſaid *J. D.* in his proper perſon complaineth, that the ſaid *J. A.* on the laſt day of *June* in the 34th year of the reign of our ſaid lord the preſent king at *T. in a certain place called*, &c. took the cattle, *to wit*, three cows and four bullocks of the ſaid *J. D.* and unjuſtly detained them againſt gages and pledges, until, *&c.* Whereupon he ſaith he is injured and hath damage to the value of 16*l* and thereupon bringeth ſuit, *&c.* And the ſaid *J. A.* by *W. T.* his attorney cometh and defendeth the force and injury when, *&c.* And prayeth

Imparlance.

prayeth leave of imparling thereupon here, until from the day of St. *Hilary* in 15 days, and hath, &c. By the assent of the said *J. D.* The same day is given to him the said *J. D.* and here, &c.

And now here at this same 15th day of St. *Hilary* cometh as well the said *J. D.* in his proper person, as the said *J. A.* by his attorney aforesaid: Whereupon the said plea being seen, read and understood, &c. by the justices here, *because in the said declaration there was no mention in what place the said cattle were taken*, it seemeth to the said justices, that a due avowry being first made by the said *J. A.* for having a return of the said cattle, then the said *J.* for the insufficiency of the said declaration, ought to have a return of the said cattle, &c. And upon this the said *J. A.* for having a return of the said cattle, well avoweth the taking the said cattle in the town aforesaid, in a certain place called the *Vicar's Land*; and justly, &c. because he saith, that one *J. C.* vicar of the church of St. *M.* in *T.* long before the time in which the said taking is supposed to be done, was seised of two acres of land with the appurtenances in *T.* aforesaid, whereof the said place, in which, &c. is parcel, as glebe of the said church, in his demesne as of fee, in right of the said church; and being so seised thereof long before the taking, &c. demised to the said *W. A.* the said two acres of land, to have from the same day by five years thence next following [which *W.* demised over to the defendant,] and so avows for

Judgment for a Return. habend. *because no mention in the declaration in what place the cattle were taken.*

Avowry pro return' habend.

for damage-feasant] and prayeth a return of the said cattle, *&c. Therefore it is granted that the said *J. A.* have a return of the said cattle, &c. And the said *J. D.* in mercy, &c.

In the county court of Middlesex *held the 2d day of* August *in the 18th year of king* George *the third.*

Decl. in replevin in the county court. Co. Ent. 314. b.

In the county court of Mid. *to wit.* } *J. F.* was summoned to answer to *J. C.* in a plea wherefore he took the goods and chattels of the said *J. C.* and them unjustly detained against sureties and pledges, &c. Whereupon the said *J. C.* by *S. T.* his attorney complaineth, that the said *J. F.* on the third day of *July* in the 18th year of the reign of our sovereign lord *George* the 3d, now king of *Great Britain*, at the parish of *St. Giles in the Fields* in the said county of *Middlesex*, at a certain place there called and known by the name of *Little St. Andrew-street* in the county aforesaid, in a certain messuage situate in the said street and then in the possession of the said *J. C.* and within the jurisdiction of this court, did take the goods and chattels of the said *J. C.* that is to say, two looking-glasses in gilt frames, two brass arms and six chairs, and them unjustly detained against sureties and pledges, &c. Wherefore the said *J. C.* saith that he is injured and hath received damage to the value

value of * 20*l*, and thereof he bringeth this ſuit, *&c.*

Pledges for proſecuting { *John Doe*, and *Richard Roe.* }

London, to wit, J. S. late, *&c.* was ſummoned to anſwer to *B. B.* of a plea why he took the goods and chattels of the ſaid *B.* and them unjuſtly detained againſt ſureties and pledges, until, *&c.* *And* whereupon the ſaid *B.* by *W. S.* his attorney complaineth, *that* the ſaid *J.* the 29th day of *Auguſt* in the 7th year of the reign of our lord the king, who now is, *&c.* at *L.* aforeſaid, that is to ſay, in the pariſh of *Chriſt-Church* in the ward of *Farringdon-Within*, in a certain place there called the kitchen, part of the dwelling-houſe of the ſaid *B.* in the pariſh and ward aforeſaid, took the goods and chattels, that is to ſay, two watches of the ſaid *B.* and them unjuſtly detained againſt ſureties and pledges until, *&c.* Whereupon he ſaith, that he is damnified and hath ſuſtained damages to the value of 40 *l.* and thereof he bringeth this ſuit, *&c.*

Decl. in replevin.

And the ſaid *J. C.* by *S. L.* his attorney cometh and defendeth the force and injury when, *&c.* and as bailiff of *T. D.* well ac-

Cognizance as bailiff.

N. B. In replevin by plaint, the ſheriff may hold plea in his county court, although the value be of 20 *l.* or above, by force of the ſtatute of *Marlebridge*. 2 Inſt. 139, 312.

know-

knowledgeth the taking of the said goods, chattels and cattle in the said places in which, &c. and justly, &c. because he saith that J. F. long before the said time when, &c. was seised of the said places in which, &c. with the appurtenances, in his demesne as of fee, and being so seised thereof, he the said J. F. by an indenture made at the parish of *Kingsnorton* aforesaid, on the 30th day of *August* in the 15th year of the reign of the late king *Charles* I. between the said J. F. of the one part, and W. L. and M. his wife, by the name of M. F. daughter of the said J. F. of the other part, one part of which said indenture, sealed with the seal of the said J. F. the said J. C. bringeth here into court, bearing date the same day and year, for and in consideration of the marriage then had between the said W. and M. and to and for some maintenance and livelihood to be provided and assured to and for the said W. and M by the said J. F. in satisfaction of part of the marriage portion of the said M. did for himself and his heirs give and grant to the said W. L. and M. his wife, one annual or yearly rent of 4 *l.* of lawful money of *England*, yearly issuing, payable, and going forth of the said places in which, &c. (among other things) To have, hold, receive, take and enjoy the said annual or yearly rent of 4 *l.* of lawful money of *England*, unto the aforesaid W. L. and M. his wife, and the heirs of the body of the said M. by the said W. L. lawfully to be begotten for ever, to be paid at the feasts of St. *Michael* the

J. F. *seized in fee.*

By indenture.

Profert.

Grants a yearly rent,

issuing out of the locus in quo, &c.

To W. L. *and* M. *his wife, and the heirs of the body of* M *to be begotten by* W.

the archangel, and the annunciation of the blessed virgin St. *Mary*, by even portions. And the said *J. F.* did grant for himself and his heirs, by the said indenture, that if it should happen that the said annual rent of 4 *l.* or any part thereof, to be in arrear and unpaid by the space of 21 days next after any of the said feasts (being lawfully demanded) then it should be lawful for the said *W. L.* and *M.* and either of them, and the heirs of the body of the said *M.* by the said *W. L.* lawfully begotten, and every of them, into the said places in which, &c. (among other lands) and every part and parcel thereof to enter and distrain, and the distress and distresses then and there found to lead, drive, chase, and carry away, and the same to impound, with-hold, detain and keep until the same annual rent of 4 *l.* and every part thereof, with the arrearages, be fully satisfied and paid, as by the said indenture more fully appeareth. By virtue of which said grant thereof they the said *W. L.* and *M.* his wife became seised of the said yearly rent of 4 *l.* in their demesne as of fee-tail, *to wit*, to them and the heirs of the body of the said *M.* by the said *W. L.* And being so seised thereof, he the said *W. L.* afterwards, *to wit*, on the 1st day of *June* in the year of our Lord 1681, at the parish of *Kingsnorton* aforesaid died, leaving issue of his body, on the body of the said *M.* his wife begotten, *M. L.* their daughter, and no other issue; and the said *M.* survived him, and became sole seised of the said yearly rent, for and during the term

With power of distress.

W. L. *and* M. *his wife, seised of the rent in fee-tail.*

W. L. *and* M. *leave issue only* M. *their daughter.*

term of her natural life, the remainder thereof belonging to the said *M.* and the heirs of her body. And being so seised thereof she, the said *M.* afterwards, *to wit*, on the 1st day of *May* in the year of our Lord 1695, at the parish of *Kingsnorton* aforesaid died seised of her said estate therein. Upon whose death the said *M.* her only daughter and heir, became seised of the said yearly rent of 4*l.* in her demesne as of fee-tail, *to wit*, to her and the heirs of her body. And being so seised thereof, she the said *M.* afterwards, *to wit*, on the 15th day of *June* in the year of our Lord 1690, at the same parish took to her husband *E. J.* by reason whereof they the said *E. J.* and *M.* his wife, in the right of the said *M.* became seised of the said yearly rent of 4*l.* in their demesne as of fee-tail, *to wit*, to them and the heirs of the body of the said *M.* *And* being so seised thereof, she the said *M.* afterwards, *to wit*, on the first day of *June* in the year of our Lord 1703, at the same parish died, leaving issue of her body by the said *E. M. J.* her daughter and heir, and so seised of her said estate in the said yearly rent of 4*l.* *Upon* whose death the said *E. J.* became seised of the said yearly rent of 4*l.* in his demesne, as of free-hold, for the term of his life, as tenant thereof by the law of *England*; and afterwards, *to wit*, on the 10th day of *October* 1706, at the parish of *Kingsnorton* aforesaid the said *E.* died. Upon whose death the said *M. J.* her daughter and sole heir became seised of the said yearly rent of

M. *the daughter seised of the rent in tail.*

Marries E. J.

Leaves issue M. *her daughter.*

E. J. *becomes tenant by the curtesy and dies.* M. *the daughter becomes seised, &c.*

of 4*l.* in her demeſne as of fee-tail, *to wit*, to her and the heirs of her body. *And* being ſo ſeiſed thereof, ſhe the ſaid *M.* afterwards, *to wit*, on the 20th day of *October* in the year laſt aforeſaid, at the ſame pariſh took to her huſband *J. D.* And thereupon the ſaid *J. D.* and *M.* his wife, in right of the ſame *M.* became ſeiſed of the ſaid yearly rent of 4 *l.* in their demeſne as of fee-tail, *to wit*, to them and the heirs of the body of the ſaid *M.* And being ſo ſeiſed thereof, he the ſaid *J. D.* afterwards *to wit*, on the 1ſt day of *April* in the year of our Lord 1709, at the ſame pariſh died, and the ſame *M.* his wife ſurvived him, and became ſole ſeiſed of the ſaid yearly rent of 4 *l.* in her demeſne as of fee-tail, *to wit*, to her and the heirs of her body. *And* being ſo ſeiſed thereof, ſhe the ſaid *M.* afterwards, *to wit*, on the 1ſt day of *September* in the ſame year, at the ſame pariſh took to her huſband *W. B.* Whereupon they the ſaid *W. B.* and *M.* his wife became ſeiſed in the right of the ſaid *M.* of the ſaid yearly rent of 4 *l.* in their demeſne as of fee-tail, *to wit*, to them and the heirs of the body of the ſaid *M.* *And* being ſo ſeiſed thereof, afterwards, *to wit*, in the term of St. *Hilary* the 8th year of the reign of the late queen *Anne*, a certain fine was levied in the court of the ſaid late queen of the bench here, *to wit*, at *Weſtminſter*, before *T. T. J. B. R. F.* and *R. D.* then juſtices and other faithful ſubjects of the ſaid late queen then and there preſent, between *S. P.* ſpinſter plaintiff, and the ſaid *W. B.*

Marries J. D.

Who dies.

She marries W. B.

A fine levied.

Between S. P. *plaintiff and*

the said W.B. *and* M. *Deforceants.*

and *M.* his wife deforceants, of the said yearly rent of 4*l.* by the name of the annual rent of 80*s.* issuing of and from one messuage, 20 acres of land, 10 acres of meadow and 20 acres of pasture with the appurtenances in *Kingsnorton* aforesaid. Whereupon a certain plea of covenant was summoned between them in the same court, *to wit*, that the said *W.* and *M.* acknowledged the said rent to belong to her the said *S.* as that which the said *S.* had of the gift of the said *W.* and *M.* and they remised and quit claimed the same from the said *W.* and *M.* and their heirs, to the said *S.* and her heirs for ever. And moreover the said *W.* for himself and his heirs, did grant that he would warrant to the said *S.* and her heirs, the said rent against the said *W.* and his heirs for ever. And likewise the said *W.* and *M.* acknowledged for themselves and the heirs of the said *M.* that they would warrant to the said *S.* and her heirs the said rent against the said *W.* and *M.* and the heirs of the said *M.* for ever. And for this acknowledgment, remission, quit-claim, warrant, fine, and concord, the same *S.* did give to the said *W.* and *M.* 60*l.* sterling; as by the record of the said fine remaining in the court of our lord the now king of the bench here, *to wit*, at *Westminster* aforesaid, manifestly appeareth.

The fine levied to the use of the said S. P. in fee.

S. P. seised in fee.

Which said fine, so had and levied as aforesaid, was had and levied to and for the only proper use and behoof of the said *S.* her heirs and assigns for ever. *Whereupon* the said *S.* became seised of the same yearly rent of 4*l.*

in her demesne as of fee; *and* being so seised thereof she the said *S.* afterwards, *to wit*, on the 11th day of *February* in the year of our Lord 1730, at the parish of *Kingsnorton* aforesaid made her last will and testament in writing, and thereby gave and devised the said yearly rent of 4 *l.* to *H. D.* and his heirs for ever. And afterwards, *to wit* on the same day and year, at the same parish, she, the said *S.* died so seised of her said estate therein. *Upon* whose death the said *H.* became seised of the said yearly rent of 4 *l.* in his demesne as of fee, by virtue of the said devise thereof; and being so seised thereof, he the said *H.* afterwards, *to wit* on the first day of *March* in the year of our Lord 1735, at the same parish died seised of the said yearly rent of 4 *l.* in his demesne as of fee. *Upon* whose death the said yearly rent of 4 *l.* descended to the said *T. D.* his brother and heir. *By* virtue of which said descent thereof, he the said *T. D.* became seised, and still is seised of the said yearly rent of 4 *l.* in his demesne as of fee. *And* because 10 *l.* of the said yearly rent for two years and a half, ending on the feast of the annunciation of the blessed virgin *Mary* in the year of our Lord 1742, on that feast were due and in arrear to the said *T. D.* and (although lawfully demanded) at the said time when, &c. being after the end of 21 days next after that feast, remained in arrear and unpaid; therefore the said *J. C.* as bailiff of the said *T. D.* well acknowledgeth the taking of the said goods, cattle and chattels,

Who by will devises it to H. D. *in fee.*

H. D *seised of the rent in fee.*

It descends to T. D. *as his heir.*

T. D. *seised And in fee.*

The rent arrear; and he makes conuzance as bailiff of the said T. D.

in the ſaid places in which, &c. and juſtly, &c. as a diſtreſs for the ſaid arrears of the ſaid yearly rent; and this he is ready to verify: Wherefore he prayeth judgment, and a return of the ſaid goods, cattle and chattels, together with his damages, &c. according to the form of the ſtatute in ſuch caſe lately made and provided, to be adjudged to him, &c.

Bar, that the fine was levied to the uſe of M. B.

And the ſaid *J. L.* ſaith, that the ſaid *J. C.* for any thing by him above alledged in pleading as bailiff of the ſaid *T. D.* ought not to acknowledge the ſaid taking the ſaid goods, cattle and chattels in the ſaid places in which, &c. to be juſt, becauſe he ſaith, that the ſaid fine ſo had and levied as aforeſaid was had and levied to and for the only proper uſe and behoof of the ſaid *M. B.* and her heirs; *Without this*, that the ſaid fine ſo had and levied as aforeſaid was had and levied to and for the only proper uſe and behoof of the ſaid *S. P.* her heirs and aſſigns, as the ſaid *J. C.* by his ſaid cognizance hath above alledged; and this the ſaid *J. L.* is ready to verify: Whereupon ſince the ſaid *J. C.* above acknowledgeth the ſaid taking of the ſaid goods, cattle and chattels, the ſaid *J. L.* prayeth judgment, and his damages on occaſion of the ſaid taking and unjuſt detention of the ſaid goods, cattle and chattels, to be adjudged to him, &c.

Traverſe.

Replication.

And the ſaid *J. C.* ſaith, as before, that the ſaid fine ſo had and levied as aforeſaid, was had and levied to and for the only uſe and

and behoof of the said *S. P.* her heirs and assigns, as the said *J. C.* by his cognizance has above alledged; and hereupon he putteth himself upon the country; *and* the said *J. L.* doth so likewise: *Therefore* the sheriff is commanded that he cause to come here in three weeks from the day of the holy *Trinity*, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Issue.

Venire *awarded.*

And the said *J. S.* by *J. B.* his attorney cometh and defendeth the force and injury, when, &c. and as church-warden of the said parish of *Christ-church* in the ward aforesaid, according to the form of the statute, &c. well avoweth the taking of the said goods and chattels in the said place in which, &c. because he saith, that at the said time when, &c. he the said *J. S.* was church-warden of the said parish of *Christ-church* in the ward aforesaid; and that he the said *J. S.* as church-warden as aforesaid at the time, &c. took the said goods and chattels in the said place in which, &c. in the name of a distress, by authority and according to the tenor, purport and effect of a certain statute, made in a parliament of our late sovereign lady *Elizabeth*, queen of *England*, &c. holden at *Westminster* in the county of *Middlesex*, in the 43d year of her reign, and as church-warden, &c. by virtue of the said statute well avoweth the said taking, &c. in the name of a distress, and justly, &c. and this he is ready to verify: Wherefore he prayeth judgment, and that a return of the said goods and

Avowry by a church warden, in the name of a distress on the Stat. 43 Eliz.

and chattels, together with his damages, according to the ſtatute, may be adjudged to him, *&c.*

Replication.

And the ſaid *B.* ſaith, that the ſaid *J. S.* for the reaſon before alledged, ought not to well avow the taking the ſaid goods and chattels in the ſaid place in which, *&c.* becauſe he ſaith that the ſaid *J. S.* of his own proper injury, and without any ſuch cauſe by him above mentioned in his avowry, took the ſaid goods and chattels of him the ſaid *B.* in the ſaid place in which, *&c.* and them unjuſtly detained againſt ſureties and pledges, *&c.* in the manner and form as he the ſaid *B.* above againſt him complaineth; and he demands that this may be inquired of by the country: *And* the ſaid *J. S.* doth the like.

Writ of falſe judgment.

GEORGE the third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Middleſex* greeting. If *J. F.* ſhall give you ſecurity that his ſuit ſhall be proſecuted, then in your full county cauſe the plaint to be recorded which is in the ſame county, without our writ, between *J. C.* and *J. F.* of the goods and chattels of the ſaid *J. C.* taken and unjuſtly detained, as it is ſaid, wherein the ſaid *J. F.* complaineth that falſe judgment hath been given againſt him in the ſaid county, and that you have the ſaid record before our juſtices at *Weſtminſter* on the octave of St. *Hilary*, under your ſeal and the ſeals of four lawful knights of the ſame county, of them as ſhall be preſent at the

	s.	d.
Curſitor	2	6
Duty	2	0
Fine	6	8
	11	2

the said record, and summon by good summoners the said *J. C.* that he be then there to hear the said record; and have you there the summons, the names of the said four knights, and this writ. Witness Ourself at *Westminster*, the 17th day of *December* in the 18th year of our reign.

Burgh.

By the Lord Chancellor of *Great Britain*, at the instance of the demandant.

s. *d.*
Received vi. viii.
S. Hetherington.

Hertfordshire, to wit. SIR *W. P.* late of *Bushey* in the county aforesaid, knight, was summoned to answer *S. T.* esq; of a plea, wherefore he took the * cattle of the said *S.* and them unjustly detained against gages and pledges, *&c.* *And whereupon* the said *S* by *J. W.* his attorney, complains that the said Sir *W.* on the eighteenth day of *May* in the first year of the reign of our sovereign lord *James* the second now king of *England*, *&c.* at *Bushey*, in a certain place there called *Marshill Ground*, took the cattle of the said *S.* (to wit) six and thirty wether sheep, twelve ewe sheep, and eight lambs, and unjustly de-

Declaration in replevin. Lill. Ent. 371. 3 Lev. 225.

* Cattle apply to owners and carcass. Hob. Int. 142.

tained them againſt gages and pledges, until, *&c.* Wherefore the ſaid *S.* ſays that he is injured, and hath damage to the value of ten pounds: and thereupon he brings ſuit, *&c.*

Avowry in proprio jure, *and recognizance as bailiff of the earl of* Eſſex.

And the ſaid Sir *W.* by *R. D.* his attorney, comes and defends the force and injury, when, *&c.* And the ſaid Sir *W.* in his own right well avows, and as bailiff of *Algernoon* earl of *Eſſex* well acknowledges the taking the ſaid cattle in the ſaid place, in which, *&c.*

The locus in quo, *&c. the freehold of defendant and the earl.*

And juſtly, *&c.* Becauſe he ſays that the ſaid place, in which, *&c.* the taking the ſaid cattle is ſuppoſed to be done, contains, and at the ſaid time in which the taking of the ſaid cattle is ſuppoſed to be done, contained in itſelf two acres of paſture with the appurtenances in *Buſhey* aforeſaid, which ſaid two acres of paſture with the appurtenances are, at the ſaid time in which, *&c.* were the ſoil and freehold of the ſaid Sir *W.* and *Algernoon* earl of *Eſſex*:

Took the cattle damage feaſant. Bar.

And becauſe the ſaid cattle at the ſaid time in which, *&c.* were in the ſaid two acres of paſture eating the graſs then growing in the ſame, and doing damage there, the ſaid Sir *W.* in his own proper right well avows, and as bailiff of the ſaid *Algernoon* earl of *Eſſex*, well acknowledges the taking the ſaid cattle in the ſaid place, in which, *&c.* And juſtly, *&c.* ſo doing damage there, *&c.*

Bar.

And the ſaid *S.* ſays, that the ſaid Sir *W.* by the reaſon before alledged, ought not in his own proper right to avow, and as bailiff of the ſaid earl to acknowledge the taking the ſaid cattle in the ſaid place in which, *&c.* as juſt;

juſt; becauſe he ſays that the ſaid two acres of paſture in which, &c. are and at the ſaid time in which, &c. and alſo from the time to the contrary whereof the memory of man is not, [illegible] parcel of the manor of *Buſhey* and of the cuſtomary land of the ſaid manor, and alſo demiſed and demiſable by copy of court-roll of the ſame manor by the lord or lords of the ſame, or by his or their ſteward or the court of the ſaid manor for the time being, to any perſon or perſons willing to take the ſame in fee-ſimple or otherwiſe, at the will of the lord or lords, according to the cuſtom of the ſaid manor:

The Locus in quo, &c. *Parcel of the manor of* B.

And the ſaid *S.* further ſays, that the aforeſaid earl and Sir *W.* before the ſaid time in which, &c. *to wit* on the twenty-firſt day of *April* in the ſaid firſt year of the reign of our ſaid lord the preſent king, were lawfully lords of the ſaid manor:

Whereof defendant and the earl of Eſſex *are lords.*

And the ſaid earl and Sir *W.* then being lords of the ſaid manor, afterwards and before the ſaid time in which, &c. *to wit*, on the ſame twenty-firſt day of *April* in the firſt year aforeſaid at a court of the ſaid earl and Sir *W.* of their ſaid manor then held for the ſaid manor within the ſaid manor at *Buſhey* aforeſaid in the county of *Hertford*, by one *T. S.* gent. then their ſteward of their ſaid manor, by copy of court-roll of the ſaid manor, granted the ſaid two acres of paſture with the appurtenances, in which &c. a- [illegible] lands and tenements, to the ſaid *S.* To have and to hold to the ſaid *S.* and his heirs and aſſigns for ever, at the will of the lords according to the cuſtom of the ſaid

And granted the locus in quo, *&c. to plaintiff.*

A a 4 manor:

who was admitted tenant.

manor: And the said *S.* according to the custom of the said manor was then and there admitted tenant thereof, by virtue of which said grant and admission, the said *S.* before the same time in which, &c. was of the said two acres of pasture with the appurtenances in which, &c. among other lands and tenements entered, and was and yet is seised thereof in his demesne as of fee-simple at the will of the lords, according to the custom of the said manor: And the said *S.* being so seised thereof before the said time in which, &c. put his said cattle into the said two acres of pasture in which, &c. to eat the grass then growing in the same; and the said cattle were in the said two acres of pasture in which, &c. eating the grass then growing there until the said Sir *W. P.* on the said eighteenth day of *May* in the first year aforesaid, at *Ensby*, aforesaid in the said two acres of pasture called *Maryhill Grounds*, in which, &c. took the said cattle of the said *S.* and unjustly detained them against gages and pledges until, &c. as the said *S.* above complains against him: And this he is ready to verify: Wherefore for that the said Sir *W. P.* above acknowledges the taking the said cattle, the said *S.* prays judgment and his damages by occasion of the taking and unjustly detaining the said cattle, to be adjudged to him, &c.

Replication. Confesses that the locus in quo, &c. is part of the manor, &c.

And the said Sir *W.* saith, that well and true it is, that the said two acres of pasture with the appurtenances in which, &c. are, and at the said time in which, &c. and also from the time to the contrary whereof the memory

mory of man is not, were parcel of the faid manor of *Bufhey* and of the cuftomary land of the faid manor, and demifed and demifable by copy of court-roll of the faid manor, by the lord or lords of the faid manor, or by his or their fteward of the court of the faid manor for the time being, to any perfon or perfons willing to take the fame in fee-fimple or otherwife, at the will of the lord or lords, according to the cuftom of the faid manor: And that the faid earl and Sir *W.* before the faid time in which, &c. to wit, on the faid twenty-firft day of *April* in the faid firft year of the reign of our faid lord the prefent king, were lawfully lords of the faid manor: And the faid earl and Sir *W.* then being lords of the faid manor, afterwards and before the faid time in which, &c. to wit, on the faid twenty-firft day of *April* in the faid firft year aforefaid, at *Bufhey* aforefaid in the county of *Hertford* aforefaid, by the faid *T. S.* then their fteward of the court of their faid manor, by copy of court roll of the faid manor, granted the faid two acres of pafture with the appurtenances in which, &c. among other lands and tenements to the faid *S.* To have and to hold to the faid *S.* his heirs and affigns for ever, at the will of the lords according to the cuftom of the faid manor; and that the faid *S.* according to the cuftom of the faid manor then and there was admitted tenant thereof; and that by virtue of the faid grant and admiffion, the faid *S.* before the faid time in which, &c. into the faid two acres of pafture with the

That faid earl and defendant were lords.

Granted to plaintiff.

Who was admitted tenant.

the appurtenances in which, &c. among other lands and tenements, entered and was seised thereof in his demesne as of fee, at the will of the lords, according to the custom of the said manor, as the said S. above in pleading has alledged: But the said Sir W. P. further says, that the said two acres of pasture with the appurtenances in which, &c. together with the other lands and tenements in the said copy mentioned, and by the said copy granted to the said S. and his heirs, and to which the said S. was as aforesaid admitted, at the said time of the said admission of the said S. in the same, were, and yet are, of the clear yearly value of twenty and eight pounds; and that the said earl and Sir W. by the said T. S. in the said full court of the said manor, held within the said manor on the twenty-first day of *April* in the said first year of the reign of our said lord the present king, the said T. S. being then steward of the earl and Sir W. then lords of the said manor of the said court of their said manor as aforesaid, after the admission of the said S. T. to the said two acres in which, &c. and the said other lands and tenements granted by the said copy to the said S. then and there assessed and appointed the sum of thirty and five pounds for a fine for the said grant to the said S. of the said two acres of pasture with the appurtenances in which, &c. and of the said other lands and tenements ... by the said copy in form aforesaid, to be paid by the said S. to the said earl and Sir W. being lords of the said manor as aforesaid, upon

But the lands of the value of 28l. per ann.

And a fine of 35l. *was assessed on the plaintiff.*

on the firſt day of *May* then next enſuing, at the porch of the church of the pariſh of *Buſhey* aforeſaid in the ſaid county of *Hertford*, and that the ſaid *S.* then and there, *to wit*, at the ſaid manor had notice of all and ſingular the ſaid premiſſes: *And* the ſaid Sir *W.* further ſays, that the ſaid fine for the lands and tenements by the ſaid copy in manner and form aforeſaid granted to the ſaid *S.* was a reaſonable fine; *And* that the ſaid *S. T.* although he had notice of the ſaid premiſſes from the ſaid lords of the ſaid manor at the ſaid court held as aforeſaid at the ſaid manor on the ſaid twenty-firſt day of *April* aforeſaid, did not pay to the ſaid earl and Sir *W.* lords of the ſaid manor, or to either of them, the ſaid ſum of thirty and five pounds aſſeſſed for the ſaid fine in form aforeſaid, upon the ſaid firſt day of *May* then next enſuing the admiſſion of the ſaid *S.* at the ſaid porch of the parochial church of *Buſhey* aforeſaid; but then and there intirely refuſed, denied, and ſtill does refuſe to pay the ſaid thirty and five pounds to the ſaid earl and Sir *W.* by which the ſaid *S. T.* forfeited to the ſaid earl and Sir *W.* being lords of the ſaid manor, whereof, *&c.* as aforeſaid, all his ſaid cuſtomary right, eſtate, title and intereſt of and in the ſaid two acres of paſture, with the appurtenances in which, *&c.* and the ſaid other lands and tenements ſpecified [illegible]: After which ſaid forfeiture made in form aforeſaid, and before the ſaid time in which, *&c.* the ſaid earl and Sir *W.* being lords of the ſaid manor as aforeſaid, entered

Fine reaſonable.

Plaintiff refuſed to pay it.

Whereby forfeited.

Wheeler *and* Honor, Raymond 42 Co. Inſt. 647. b. Cro. Eliz. Dalton *and* Hammond 779 Cro. Ja. 617. Gardner *and* Norman.

Defendant and the earl entered.

entered into the said two acres of pasture with the appurtenances, in which, &c. and were and yet are seised thereof in their demesne as of fee: And because the said cattle after the said entry, *to wit*, at the said time in which, &c. were in the said two acres of pasture with the appurtenances, in which, &c. eating the said grass then growing in the same and doing damage there, the said Sir *W.* as before in his own proper right well avows, and as bailiff of the said earl well acknowledges the taking the said cattle in the said place in which, &c. and justly, &c. to doing damage there, &c. And this he is ready to verify: Wherefore, as before, he prays judgment, and a return of the said cattle, together with his damages, costs and charges by him about his suit in this behalf expended, according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

And were seized in fee.

Cattle damage feasant.

And the said *S.* protesting that the said sum of thirty and five pounds for the said fine for the lands and tenements granted by the said copy to the said *S.* in manner and form aforesaid, was not a reasonable fine, as the said Sir *W.* has above by pleading alledged, For plea the said *S.* says, that there is, and, from the time to the contrary whereof the memory of man is not, hath been a custom within the said manor, used and approved within the said manor for the whole time aforesaid, *to wit*, that every person who should be admitted tenant to any customary lands or tenements of the said manor by copy

Plea in bar.
Protestando
Fine unreasonable.

Custom that the fine should not exceed a year's value.

py of court-roll of the ſaid manor, have been accuſtomed, and ought to pay to the lord or lords of the ſaid manor for the time being, for a fine for his admiſſion to ſuch cuſtomary lands or tenements, ſo much money as ſuch lands or tenements were worth by the year at the time of ſuch admiſſion, and not more: *And* the ſaid *S.* in fact ſays, that the ſaid two acres of paſture, with the appurtenances in which, &c. together with the other lands and tenements mentioned in the ſaid copy, and by the ſaid copy granted to the ſaid *S.* and his heirs, and to which the ſaid *S.* was admitted as aforeſaid, at the time of the admiſſion of the ſaid *S.* to the ſame were worth, and are yet worth twenty and eight pounds by the year, and not more: *And* the ſaid *S.* further ſays, that at the time of his ſaid admiſſion to the ſaid tenements with the appurtenances, *to wit*, at the ſaid court of the ſaid manor held within the ſaid manor on the ſaid twenty-firſt day of *April* in the firſt year aforeſaid, he the ſaid *S.* was ready and offered to pay to the ſaid Sir *W.* then one of the lords of the ſaid manor, being then and there preſent in his own proper perſon, ſo much money as the ſaid cuſtomary tenements with the appurtenances were worth by the year, at the time of the admiſſion of the ſaid *S.* to the ſame, *to wit*, twenty and eight pounds of lawful money of *England*; which ſaid twenty and eight pounds the ſaid Sir *W.* then and there intirely refuſed to take or accept of the ſaid *S.* And this he is ready to verify: Wherefore, as before, he prays judgment,

Premiſſes worth 28*l.* per annum.

Which plaintiff tendered.

And defendant refuſed.

judgment, and his damages by occasion of the taking and unjustly detaining the said cattle, to be adjudged to him, &c.

Demurrer.

And the said Sir *W.* says, that the plea of the said *S.* above by rejoining pleaded, and the matter therein contained, are not sufficient in law to bar the said Sir *W.* from having his avowry and cognizance aforesaid, and that he has no need and is not bound by the law of the land to answer to the said plea pleaded in manner and form aforesaid: And this he is ready to verify: Wherefore for default of a sufficient plea in this behalf the said Sir *W.* as before, prays judgment, and a return of the said cattle, together with his damages, costs and charges by him about his suit in this behalf expended, according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

Cause.

And for cause of demurring in law to the said plea, the said Sir *W.* according to the form of the statute in such case lately made and provided, shews, and to the court here demonstrates this cause following, *to wit*, that the value of the land is in estimation, and the said custom by the said *S.* above in pleading pretended and alledged, is uncertain, insufficient and void in law.

Joinder.

And the said *S.* for that in his said plea above by rejoining pleaded he has above alledged sufficient matter in law to bar the said Sir *W.* from having his avowry and cognizance aforesaid, which he is ready to verify, which said matter the said Sir *W.* does not deny nor any way answer thereto, but intire-

ly

ly refuſes to admit the verifying the ſame, as before, prays judgment, and his damages by occaſion of taking and unjuſtly detaining the ſaid cattle, to be adjudged to him: *And* becauſe the ſaid juſtices here would adviſe themſelves of and upon the premiſſes before they give judgment thereupon, a day is given to the ſaid parties here until on the octave of St. *Hilary*, to hear their judgment thereupon; for that the ſaid juſtices here are not yet, *&c.*

Continuance.

At which day here come as well the ſaid *S.* as the ſaid Sir *W.* by their attornies aforeſaid: And upon this the premiſſes being ſeen, and by the juſtices here fully underſtood, it ſeems to the ſaid juſtices here, that the ſaid plea of the ſaid *S.* above by rejoining pleaded, and the matter therein contained, are ſufficient in law to bar the ſaid Sir *W.* from having his avowry and cognizance aforeſaid, as the ſaid *S.* has above alledged; for which the ſaid *S.* ought to recover againſt the ſaid Sir *W.* his damages, by occaſion of taking and unjuſtly detaining the ſaid cattle:

Judgment for the plaintiff.

But becauſe it is not known what damages the ſaid *S.* has ſuſtained by occaſion of the taking and unjuſtly detaining the ſaid cattle, it is commanded to the ſheriff, that by the oath of good and lawful men of the county aforeſaid, he diligently inquire what damages the ſaid *S.* has ſuſtained, as well by occaſion of the taking and unjuſtly detaining the ſaid cattle, as for his coſts and charges by him about his ſuit in this behalf expended; and that the ſheriff make appear here from the day of *Eaſter* in fifteen days the inquiſition which he

Inquiry awarded.

The return.

he shall make thereupon, under his seal, and the seals, &c. *At which day* the said S. comes here by his attorney aforesaid, and the sheriff, *to wit*, now sends here a certain inquisition taken before him at *Stevenage* in the county aforesaid, on the fifteenth day of *April* last past, by the oath of twelve, &c. by which it is found that the said S. sustained damages by occasion of the taking and unjustly detaining the said cattle, besides his costs and charges by him about his suit in this behalf expended, to fourpence, and for those costs and charges to sixpence. *Therefore* it is considered, that the said S. recover against the said Sir W. his said damages to tenpence, found by the said inquisition in form aforesaid, and also nine pounds five shillings and twopence by the court here adjudged to the said S. at his request for his said costs and charges of increase, which said damages in the whole amount to nine pounds and six shillings: *And* the said Sir W. in mercy, &c.

Judgment signed 3 May 2 Jac. 2.

Mercy.

Declaration in replevin for a mare taken in the king's high way. 1 Il. Ent. 351 Salk. 3. p. 8. 6 Mod. 102 Pract Reg. 157. Holt 627. 2 R. Raym. 1016

Northampton, *to wit*, J. B. was summoned to answer S. C. of a plea, wherefore he took a mare of the said S.'s and unjustly detained her against gages and pledges, &c. *And whereupon* the said S. by W. L. his attorney, complains, that the said J. on the first day of *October* in the twelfth year of the reign of our lord *William* the third late king of *England*, &c. at *Hardingston* in the county aforesaid, in a certain place there called the king's highway, took a mare

mare of the ſaid *S.*'s, and unjuſtly detained her againſt gages and pledges until, *&c.* and whereupon the ſaid *S.* ſays that he is injured, and hath damage to the value of 10 *l.* and thereupon he brings ſuit, *&c.*

Cognizance as bailiff of lord L.

And the ſaid *J. B.* by *J. B.* his attorney comes and defends the force and injury when, *&c.* and as bailiff of the right honourable *W.* lord *L.* well acknowledges the taking the ſaid mare at the ſaid time in which, *&c.* in a certain place called the queen's high way, and unjuſtly, *&c.* Becauſe he ſays, that the ſame place contains, and at the ſame time in which, *&c.* contained in itſelf half a rood of land with the appurtenances in *Hardingſton* aforeſaid, which ſaid half rood of land long before, and at the ſaid time in which, *&c.* was parcel of a certain antient meſſuage in *Hardingſton* aforeſaid, which ſaid meſſuage long before and at the ſaid time in which, *&c.* was the ſoil and freehold of the ſaid lord *L.* and becauſe the ſaid mare at the ſaid time in which, *&c.* was in the ſaid half rood of land in which, *&c.* doing damage there, the ſaid *J.* as bailiff of the ſaid *W.* lord *L.* well acknowledges the taking the ſaid mare in the ſaid place in which, and juſtly, *&c.* doing damage there, *&c.* *without this*, that the ſaid *J.* took the ſaid mare in a certain place called the king's highway, as the ſaid *S.* hath declared againſt him: And this he is ready to verify: Whereupon he prays judgment, and a return of the ſaid mare to be adjudged to him, *&c.*

The locus in quo *his freehold.*

And the mare there damage-feaſant.

Traverſe not taken in king's highway.

Replication, took in the king's highway.

And the said *S.* says, that the said *J. B.* ought not, as bailiff of the right honourable *W.* lord *L.* to acknowledge the taking the said mare to be just; because he says, that he the said *J. B.* at the said time in which, &c. took the said mare in the said place then called the king's highway, in manner and form as the said *S.* above by declaring has alledged: And this he prays may be inquired of by the country.

Demurrer in abatement.

And the said *J.* says, that he has no need, nor is he bound by the law of the land, in any manner to answer to the said plea of the said *S.* above by replying pleaded, because he says, that the said plea is not sufficient in law to maintain his said declaration: And this he is ready to verify: Wherefore for default of a sufficient replication in this behalf the said *J.* as before prays judgment, and that the said declaration may be quashed, &c.

Joinder.

And the said *S.* for that he has above alledged sufficient matter in law for him the said *S.* to maintain his action and declaration aforesaid; which he is ready to verify; which said matter the said *J.* does not deny, nor in any manner answer thereto, but has intirely refused to admit the verifying the same; the said *S.* prays judgment, and his damages by occasion of the taking and unjustly detaining the said mare, to be adjudged to him, &c. *And because* the justices here would advise of and upon the premisses before they give judgment thereupon, a day is given to the said parties here until

Continuance by Cur' advisare vult.

until[*] from the day of St. *Michael* in three weeks to hear their judgment thereupon, for that the said justices here are not yet, &c. *At which day* come here as well the said *S.* as the said *J.* by their attornies aforesaid; and upon this the premisses being seen, and by the justices here fully understood, it seems to the said justices here that the said plea of the said *S.* above by replying pleaded is sufficient in law to maintain his said declaration as the said *S.* has above alledged; *for which* the said *S.* ought to recover his damages by occasion of the premisses against the said *J.* but because it is not known what damages the said *S.* has sustained by occasion of the premisses, it is commanded to the sheriff, that by the oath of twelve good and lawful men of his county, he diligently inquire what damages the said *S.* has sustained, as well by occasion of the premisses, as for his costs and charges by him about his suit in this behalf expended; and that the sheriff make appear here the inquisition which he shall thereupon take on the octave of St. *Hilary* under his seal and the seals, &c. *At which day* here comes the said *S.* by his attorney aforesaid, and the sheriff, *to wit*, Sir *C. C.* bart. now sends here a certain inquisition taken before him at the town of *Northampton* in the county aforesaid, on the nineteenth day of *January* last past, by the oath of twelve, &c. By which it is found,

Judgment for the plaintiff. 1 Sid. 189, 190. 1 Vent. 135, 136. Cro. Eliz. 202.

Inquiry awarded.

The return.

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* No such return. See *Vol.* 1. *p.* 63.

that the said *S.* hath sustained damages by occasion of the premisses, besides his costs and charges by him about his suit in this behalf expended, to 80 *s.* and for those costs and charges to 2 *d.* *It is therefore* considered, that the said *S.* recover against the said *J.* his damages to 80 *s.* and 2 *d.* found by the said inquisition in form aforesaid; and also 12 *l.* 17 *s.* 4 *d.* by the court here adjudged to the said *S.* at his request for his said costs and charges.

Judgment.

Errors assigned.

Afterwards, to wit, on next after in this same term before our lady the queen at *Westminster* the said *J.* comes by *A. M.* his attorney, and says, that in the record and process aforesaid, and also in giving the said judgment, there is manifest error in this, *to wit*, that by the said record it appears, that the said judgment in form aforesaid given was given for the said *S. C.* against the said *J. B.* where by the law of the land of this kingdom of *England* judgment in the said plea ought to have been given for the said *J. B.* against the said *S. C.*

No original writ.

There is also error in this, *to wit*, that by the said record it appears, that the said *J.* was summoned to answer the said *S.* of the plea aforesaid, yet no original writ between the parties aforesaid of the plea aforesaid is filed of record, nor remains of record in the said court of our lady the queen of the bench; and therefore in that there is manifest error.

No warrant of attorney.

There is also error in this, *to wit*, that by the said record it appears, that the said *S.* came and appeared in the said court

of our ſaid lady the queen of the bench by *W. L.* his attorney, yet the ſaid *W. L.* had no warrant of attorney of record by writ of our lady the preſent queen, nor without writ, to warrant his appearance for the ſaid *S.* in the plea aforeſaid: *And* the ſaid *J.* prays ſeparate writs of our lady the queen, *to wit*, one to be directed to the chief juſtice of our ſaid lady the queen of the bench, and the other to the *Cuſtos Brevium* of our ſaid lady the queen of the bench aforeſaid, to certify our ſaid lady the preſent queen the truth thereupon more fully; and it is granted to him, &c. *Upon which*, *Tueſday* next after the fifteenth day of the Holy *Trinity* is given by the court of our ſaid lady the preſent queen here to return to the court of our ſaid lady the queen before the queen herſelf at *Weſtminſter* the ſaid ſeveral writs of *certiorari* above prayed; the ſame day is given to the ſaid *S.* at the ſame place, &c. *And* the ſaid chief juſtice of the bench aforeſaid, and the ſaid *Cuſtos Brevium* of our ſaid lady the preſent queen at that day did not ſend the ſaid ſeveral writs, nor did either of them, &c. nor did they do any thing thereupon, nor did either of them do any thing thereupon: *And thereupon* the ſaid *S.* freely comes here into court, and ſays, that there is not any error either in the record and proceedings aforeſaid, or in giving the ſaid judgment; and he prays that the court of our ſaid lady the queen now here may proceed to the examination as well of the record and proceedings aforeſaid, as of the matter afore-

Certiorari *awarded.*

Rule to return Certiorari.

Non miſer' br'ia.

In nullo eſt erratum.

 ſaid

said above assigned for error, and that the said judgment may be in all things affirmed: *But because* the court of our said lady the queen now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lady the queen until in one month of *Easter*, wheresoever, &c. to hear judgment of and upon the same premisses, for that the court of our said lady the queen now here is not yet advised thereof. *At which day* before our lady the queen at *Westminster* the said parties come by their attornies aforesaid: Whereupon the court of our said lady the queen now here, having seen and fully understood and diligently examined as well the said record and proceedings, and the judgment thereupon given, as the said causes and matters above assigned and alledged for error, for that it seems to the court of our said lady the queen here, that the said judgment is in nothing vitious or defective, and that there is no error in the said record; it is considered that the said judgment be in all things affirmed, and stand in its full force and effect; the said causes above assigned for error in any wise notwithstanding, &c. *And* it is further considered by the said court, that the said *S.* recover against the said *T.* 12 *l.* adjudged by the court of our lady the queen now here to the said *S.* by his assent, according to the form of the statute thereupon lately made and provided, for his costs, charges and damages which he has sustained by occasion of the

Continuance.

Judgment affirmed.

Costs.

the delay of the execution of the ſaid judgment, by pretence of proſecuting the ſaid writ of our lady the queen for correcting errors of and upon the premiſſes: And that the ſaid *S.* thereupon have his execution, *&c.*

Scire Facias

Common Pleas.

Trinity *term in the* 10*th year of king* George *the third.*

Scire facias *by an adminiſtrator* de bonis *against heir at law and tertenants.*

London, *to wit,* IT was commanded to the ſheriffs of *London, Whereas T. M.* lately in the court of the lord *James* II. late king of *England,* (that is to ſay) in the term of the Holy *Trinity* in the ſecond year of his reign, before Sir *H B.* knt. and his companions, then juſtices of the late king of the common bench at *Weſtminſter*, by the judgment of the ſame court had recovered againſt *T. T.* late of the pariſh of *St. Andrew Holborn* in the county of *Middleſex*, eſq; as well a debt of 500*l.* as 90*s.* which were adjudged in the ſame court to the ſaid *T. M.* for his damages which he had ſuſtained by reaſon of the detaining of that debt, whereof he is convicted, as by the record and proceedings thereof now remaining in the ſaid court of our preſent ſovereign lord the king, before his juſtices at *Weſtminſter* aforeſaid, manifeſtly

manifeſtly appeareth: Nevertheleſs execution of the judgment aforeſaid ſtill remaineth to be made; and as well the ſaid *T. M.* as the ſaid *T. T.* are dead ſince the recovering the ſaid judgment, as our ſaid preſent ſovereign lord the king hath received information by *W. S.* adminiſtrator of the goods and chattels which were of the ſaid *T. M.* at the time of his death not adminiſtered by *A.* late wife of him the ſaid *W. S.* deceaſed, and *T. M.* her ſiſter alſo deceaſed, late executrixes of the teſtament of the ſaid *T. M.* And his ſaid now majeſty being willing, *&c.* that by good and lawful men they ſhould warn *W. T.* couſin and heir of the ſaid *T. T.* deceaſed, and the tenants of all the lands and tenements which were of the ſaid *T. T.* on the morrow of the Holy *Trinity* in the ſaid 2d year of the ſaid late king *James* II. (on which day the judgment aforeſaid was given) or at any time afterwards, in their bailiwic, that they ſhould be here at this day (that is to ſay) from the day of St. *Michael* in three weeks, to ſhew if they have or know of any thing, *&c.* why the ſaid *W. S.* ſhould not have execution of the debt and damages aforeſaid, to be levied of thoſe lands and tenements, according to the form and effect of the recovery aforeſaid, *&c.* if, *&c.* And now here at this day cometh as well the ſaid *W. S.* by *T. B.* his attorney, as *J. T.* eſq; by *C. W.* his attorney; and the ſaid *W. T.* although on the fourth day of the plea aforeſaid he was ſolemnly demanded, came not;

The return. and the ſheriffs, *to wit*, *W. R.* and *B. R.* eſqrs.

esqs. now return, that by virtue of the said writ to them directed, by *J. C.* and *R. R.* good and lawful men of their bailwic, they had warned the said *W. T.* cousin and heir of the said *T. T.* and the said *J. T.* esq; the tenant of 18 messuages with the appurtenances in the parish of *St. Andrew Holborn* in their bailiwic (*to wit*) one of them with the appurtenances then or late in the tenure or occupation of *E. M.* or her assigns [*the other 17 messuages described in like manner*] which were the lands and tenements of the said *T. T.* on the day of giving the judgment aforesaid, that they be here on this day (*to wit*) from the day of St. *Michael* in three weeks, to shew as the writ doth require; and the said sheriffs did certify that there were no other tenants, nor was there any other tenant of any other lands or tenements which were his the said *T. T.*'s on the day of giving the judgment aforesaid, or at any time after, in their bailiwic, whom they could warn: And hereupon the said *W. S.* saith, that administration of all the goods and chattels which were of the said *T. M.* at the time of his death not administered by the said *A.* deceased, late wife of the said *W. S.* and the said *T. M.* deceased, the executrixes of the testament of the said *T. M.* after the deaths of the said *A.* and *T.* (*to wit*) on the 9th day of *August* in the 10th year of the reign of our late sovereign lord king *George* I. at *London*, in the parish of St. *Mary le Bow* in the ward of *Cheap*, was committed by *W.* by divine Providence archbishop of *C.* primate of

Letters of administration.

all

all *England* and metropolitan, to him the said *W. S.* and he produceth here in court the letters of administration of the said archbishop, with the testament of the said *T. M.* annexed, which testifieth the commitment of the administration aforesaid to him in form aforesaid, and he prayeth execution of the debt and damages aforesaid against the said *W. T* to be levied of the lands and tenements which were of the said *T. T.*'s at the aforesaid time of giving the judgment aforesaid, or at any time since, and which descended from the said *T. T.* to the said *W. T.* as his cousin and heir, by his default, and also against the said *T. T.* to be levied of the messuages aforesaid, with the appurtenances, whereof he is returned tenant as aforesaid, to be adjudged to him the said *W. S.*

Profert.

Double plea of tertenant,

And the said *J. T.* by *C. W.* his attorney cometh and saith, that the said *W. S.* ought not to have execution of the debt and damages aforesaid, against him the said *J. T.* to be levied of the tenements aforesaid, of which he is above returned tenant, because he saith that all the money due upon the said judgment in the said writ mentioned was paid and satisfied by the said *T. T.* to the said *T. M.* in the same writ named, *to wit*, at *London*, in the parish of *St. Mary le Bow* in the ward of *Cheap*; and this he is ready to verify: Wherefore he prayeth judgment if the said *W. S.* ought to have execution against the said *J. T.* of the debt and damages aforesaid, to be levied of the tenements aforesaid, of which he is above returned tenant; and the

That the money on the judgment was paid.

the said *T. T.* by force of the statute in that case made and provided, and by leave of the court here granted to him, for a further plea saith, that the said *W. S*, ought not to have execution of the debt and damages aforesaid against the said *J. T.* to be levied of the tenements aforesaid, of which he is above returned tenant as aforesaid, because he saith, that the said *T. T.* on the day when the said judgment in the said writ named was given, or ever after, was not seised of the tenements aforesaid, of which the said *J. T.* is above returned tenant, or of any part thereof, in his demesne as of fee; and this he is ready to verify: Wherefore he prayeth judgment if the said *W. S.* ought to have execution against him of the debt and damages aforesaid, to be levied of the said tenements, of which he is above returned tenant as aforesaid, &c.

And that the deft. in the original judgment was not seised in fee of the messuage, &c. in the writ of Scire facias.

Geo. Wilson.

And the said *W. S.* saith, that he by any thing by the said *J. T.* above in pleading alledged ought not to be barred from having execution of the debt and damages aforesaid against the said *J. T.* to be levied of the tenements aforesaid, with the appurtenances, of which he is returned tenant as aforesaid; because as to the plea of the said *J. T.* first above pleaded, he the said *W. S.* saith, that all the money due upon the said judgment in the said writ mentioned was not paid or satisfied by the said *T. T.* to the said *T. M.* in the said writ named, as the said *J. T.* hath above in pleading alledged; and this he prayeth

Replication.

To the first part, that the money was not paid.

prayeth may be inquired by the country; and the said *J. T.* doth likewise the same. And as to the plea of the said *J. T.* last above pleaded, he the said *W. S.* saith, that before the said day when the said judgment was given, *to wit*, on the 10th day of *January* in the year of our Lord 1685. the said *T. T.* was seised of the tenements aforesaid with the appurtenances, of which the said *J. T.* is above returned tenant, in his demesne as of fee; and being so seised on the 1st day of *April* in the 2d year of the reign of our lord *James* II. late king of *England*, &c. by one indenture made at the parish of St. *Andrew Holborn* aforesaid, between the said *T. T.* esq; *R. A. T. A. E. C.* and *T. T.* gent. by their respective names of *T. T.* of the parish of St. *Andrew Holborn*, *London*, esq; *R. A.* of *Newport Pagnel* in the county of *Bucks*, esq; *T. A.* of *Bedwel Park* in the county of *Hertford*, esq; *E. C.* of *Gray's Inn* in the county of *Middlesex*, esq; and *T. T.* of the parish of St. *Andrew Holborn*, *London*, gent. and *E. B.* and *J. W.* by their respective names of *E. B.* of *Lincoln's Inn*, in the county of *Middlesex*, esq; and *J. W.* of *Gray's Inn* aforesaid, of the other part; one part of which indenture sealed with the seals of the said *T. T.* esq; *R. A. T. A. E. C.* and *T. T.* gent. he the said *W. S.* bringeth here into court, the date whereof is the said day and year last above mentioned, he the said *T. T.* esq; for and in consideration of a certain sum of money to him the said *T. T.* esq; by the said *E. B.* and *J. W.* in hand paid, did bargain

Issue thereon.

To the second part,

That the defendant in the judgment was seised in fee.

And did by lease.

Profert.

bargain and ſell, and they the ſaid *R. A. T. A. E. C.* and *T. T.* gent. did ratify and confirm the tenements aforeſaid, whereof the ſaid *J. T.* is returned tenant as aforeſaid with the appurtenances, together with other lands, unto the ſaid *E. B.* and *J. W.* To have and to hold unto the ſaid *E. B.* and *J. W.* their executors, adminiſtrators and aſſigns, from the day next before the day of the date of the ſaid indenture unto the end and term of one year then next following and fully to be complete and ended, as by the ſaid indenture more fully doth appear: by virtue of which bargain and ſale, and by force of the ſtatute for transferring of uſes into poſſeſſion made at *Weſtminſter* in the county of *Middleſex*, on the 4th day of *February* in the 27th year of the reign of the lord *Henry* VIII. late king of *England*, &c. the ſaid *E.* and *B.* and *J. W.* were poſſeſſed of the tenements aforeſaid, whereof the ſaid *J. T.* is ſo returned tenant, with the appurtenances, for the ſaid term of one year. And the ſaid *E. B.* and *J. W.* being ſo poſſeſſed thereof, and the ſaid *T. T.* eſq; being ſo ſeiſed of the reverſion thereof in his demeſne as of fee, afterwards, *to wit*, on the 2d day of *April* in the 2d year of the reign of the ſaid lord *James* II. late king of *England*, &c. by one indenture *quadriparite* made at the ſaid pariſh of St. *Andrew Holborn* between the ſaid *T. T.* eſq; *R. A. T. A. E. C.* and *T. T.* gent. by their reſpective names of *T. T.* of the pariſh of St. *Andrew Holborn*, *London*, eſq; *R. A.* of *New Port Pagnel* in the county of *Bucks*, *T. A.* of *Bedwel Park* in

And releaſe.

in the county of *Hertford*, esq; *E. C.* of *Gray's Inn* in the county of *Middlesex*, esq; and *T. T.* of the parish of St. *Andrew Holborn*, *London*, gent. of the first part, the said *E. B.* and *J. W.* by their respective names of *E. B.* of *Lincoln's Inn* in the county of *Middlesex*, esq; and *J. W.* of *Gray's Inn* aforesaid, esq; of the second part, *E. F.* and *G. L.* by their respective names of *E. F.* of *Gray's Inn* aforesaid, esq; and *G. L.* of the *Inner-Temple*, *London*, esq; of the third part, and *W. F.* by the name of *W. F.* of *Hatton Garden* in the said county of *Middlesex*, esq; of the fourth part, one part of which indenture sealed with the seals of the said *T. T.* esq; *R. A. T. A. E. C.* and *T. T.* gent. he the said *W. S.* bringeth here into court, the date whereof is the same day and year last above mentioned, he the said *T. T.* esq; did grant, and they the said *R. A. T. A. E. C.* and *T. T.* gent. the reversion of the tenements aforesaid, whereof the said *J. T.* is so returned tenant, with the appurtenances, together with other lands, to the said *E. B.* and *J. W.* and their heirs: To have and to hold unto the said *E. B.* and *J.* their heirs and assigns for ever, to the use of them, their heirs and assigns for ever; To the intent they might become perfect tenants of the freehold of the tenements aforesaid, in order and to the intent that a common recovery thereof might be had and suffered in manner and form in the same indenture specified: And it was declared by the same indenture,

Profert.

Convey.

To make a tenant to the Præcipe, *in order to suffer a common recovery.*

The uses thereof declared.

denture, that the ſaid recovery ſo to be had and ſuffered, and all and every other recovery or recoveries, conveyances and aſſurances whatſoever before that time had, levied, ſuffered or executed, or hereafter to be had, levied, ſuffered or executed of the tenements aforeſaid, whereof the ſaid *J. T.* is returned tenant, with the appurtenances, or any of them, by or between the ſaid parties to the ſame indenture or any of them, ſhould be and enure, and are by the ſame indenture declared to be and enure to the uſe of Sir *R. A.* and *J. B.* of the county of *Cambridge*, eſq; and their heirs, during the joint lives of the ſaid *T. T.* eſq; and *E.* his wife, and from and after the determination of that eſtate, to the uſe of the ſaid Sir *R. A.* and *J. B.* and their heirs, for and during the lives of the ſaid *T. T.* eſq; and *E.* his wife, and the life of the longer liver of them; and from and after the deceaſe of the ſaid *T. T.* eſq; and *E.* his wife, and of the ſurvivor of them, that then they the ſaid *R. A.* and *J. B.* and their heirs and aſſigns, ſhould ſtand and be ſeiſed of the tenements aforeſaid with the appurtenances, to the uſe of the firſt ſon of the body of the ſaid *T. T.* eſq; on the boby of the ſaid *E.* begotten, and of the heirs male of the body of ſuch firſt ſon iſſuing; and for default of ſuch iſſue, then to the uſe of the ſecond, third, fourth, fifth, ſixth, ſeventh, and all and every other ſon and ſons of the body of the ſaid *T. T.* eſq; on the body of the ſaid *E.* begotten, ſeverally, ſucceſ-

2 ſively,

ſively, and in remainder, one after another, as they ſhould be in priority of birth, and of the heirs male of the body and bodies of every ſuch ſon and ſons iſſuing; the elder of ſuch ſons and the heirs male of his body iſſuing to take before the younger of ſuch ſons and the heirs male of his body iſſuing; and for default of ſuch iſſue, to the uſe of the ſaid Sir *R. A.* and *J. B.* their executors, adminiſtrators and aſſigns, for the term of 500 years, without impeachment of waſte, in which indenture is contained a proviſo, that if the ſaid *T. T.* eſq; ſhould happen to die without any iſſue female of his body on the body of the ſaid *E.* begotten, or without leaving the ſaid *E.* with child of one or more daughter or daughters that ſhould be born alive; that then the eſtate ſo limited to the ſaid Sir *R. A.* and *J. B.* for 500 years, ſhould ceaſe, determine, and be utterly void, as by the ſaid indenture, amongſt other things, more fully doth appear. By virtue whereof the ſaid *E. B.* and *J. W.* were ſeiſed of the tenements aforeſaid, whereof the ſaid *J. T.* is ſo returned tenant, with the appurtenances, in their demeſne as of fee; and being ſo ſeiſed, afterwards purſuant to the ſaid indenture quadripartite, *to wit*, on the 12th day of *February* in the 2d year of the reign of the ſaid lord *James* II. late king of *England*, &c. the ſaid *E. F.* and *G. L.* proſecuted out of the court of the ſaid late king *James* II. of his chancery at *Weſtminſter* aforeſaid, a certain writ of the ſaid late king of entry upon a diſſeiſin in the *poſt* againſt the ſaid *E. B.* and

Recovery.

Writ of entry.

and *J. W.* then tenants of the freehold of 60 meſſuages with the appurtenances in the pariſhes of St. *Andrew Holborn* and St. *Dunſtan in the Weſt*, of which the tenements aforeſaid with the appurtenances, whereof the ſaid *J. T.* is returned tenant as aforeſaid, were parcel, to the then ſheriffs of *London* directed, by which writ the ſaid late king commanded the ſaid late ſheriffs of *London* that they ſhould command the ſaid *E. B.* and *J. W.* that juſtly and without delay they ſhould render to the ſaid *E. F.* and *G. L.* the ſaid 60 meſſuages with the appurtenances, which they the ſaid *E. F.* and *G. L.* claimed to be their right and inheritance, and into which they the ſaid *E. B.* and *J. W.* had not then entry, but after a diſſeiſin which *H. H.* thereof unjuſtly and without judgment had made of them the ſaid *E. F.* and *G. L.* within 30 years then laſt paſt, as they then ſaid; and whereupon they then complained, that the ſaid *E. B.* and *J. W.* then deforced them there; and unleſs they did ſo, and that the ſaid *E. F.* and *G. L.* ſhould make the ſaid then ſheriffs ſecure of proſecuting their claim, then they ſhould ſummon by good ſummoners the ſaid *E. B.* and *J. W.* to be before the juſtices of the ſaid late king here, *to wit*, at *Weſtminſter* aforeſaid, from the day of *Eaſter* in 15 days then next following, to ſhew wherefore they did not; and that the ſaid then ſheriffs ſhould have there the ſummoners, and that writ: At which ſaid 15th day from the day of *Eaſter*, before Sir *H. B.* knight, and his companions, then juſtices of the ſaid late king of the

Parties appear.

 bench

bench here, came as well the ſaid *E. F.* and *G. L.* as the ſaid *E. B.* and *J. W.* in their proper perſons, and *B. T.* and *T. K.* knights, then ſheriffs of *London* aforeſaid, then and

Writ returned. there returned the ſaid writ to them in form aforeſaid directed, in all things ſerved and executed, *to wit*, that the ſaid *E. F.* and *G. L.* had found to the ſaid ſheriffs pledges of proſecuting the ſaid writ, *to wit*, *John Doe* and *Richard Roe*; and that the ſaid *E. B.* and *J. W.* were ſummoned by *J. D.* and

Count. *R. F.* And thereupon the ſaid *E. F.* and *G. L.* in their proper perſons declared againſt the ſaid *E. B.* and *J. W.* then tenants of the freehold of the ſaid 60 meſſuages with the appurtenances, of which the tenements aforeſaid with the appurtenances, whereof the ſaid *J. T.* is returned tenant as aforeſaid, then were parcel, and demanded againſt the ſaid *E. B.* and *J. W.* the ſaid 60 meſſuages with the appurtenances, as their right and inheritance, and into which the ſaid *E. B.* and *J. W.* had no entry, but after a diſſeiſin which *H. H.* thereof unjuſtly and without judgment made of them the ſaid *E. F.* and *G. L.* within 30 years, &c. And whereupon they ſaid, that they were ſeiſed of the ſaid 60 meſſuages with the appurtenances in their demeſne as of fee and right in the time of peace in the time of the then lord the king, by taking the profits thereof to the value, &c. And into which, &c. And thereof they then brought ſuit, &c. And the ſaid

Tenant vouches over. *E. B.* and *J. W.* in their proper perſons then came and defended their right, when, &c.

&c. And thereupon vouched to warranty the said *T. T.* esq; who was then likewise present in the same court in his proper person, and did freely warrant to them the said messuages with their appurtenances; and thereupon the said *E. F.* and *G. L.* did demand against him the said *T.* tenant by his warranty the messuages aforesaid with the appurtenances, in form aforesaid; and whereupon they then said, that they were seised of the messuages aforesaid with the appurtenances in their demesne as of fee and right, in the time of peace in the time of the then lord the king, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof they then brought suit, *&c.* And the said *T. T.* tenant by his warranty then and there defended his right, when, *&c.* and thereupon further voucheth to warranty *J. W.* who was then likewise present in the same court in his proper person, and did freely warrant to him the said messuages with their appurtenances, *&c.* And thereupon the said *E. F.* and *G.* did demand against him the said *J. W.* tenant by his warranty the messuages aforesaid with the appurtenances in form aforesaid, *&c.* And whereupon they then said, that they were seised of the messuages aforesaid, with the appurtenances, in their demesne as of fee and right in the time of peace, in the time of the then lord the king, by taking the profits thereof to the value, *&c.* and into which, *&c.* and thereof they then brought suit, *&c.* And the said *J. W.* tenant by his warranty then de-

Count against first vouchee.

First vouchee vouches over.

Count against common vouchee.

Common vouchee; leads.

 fended

fended his right, when, &c. And he then said, that the said *H. H.* did not disseise the said *E. F.* and *G.* of the messuages aforesaid, with the appurtenances, as they the said *E. F.* and *G.* by their writ and count aforesaid had above supposed; and of this he then put himself upon the country, &c. and the said *E. F.* and *G.* then prayed leave to imparl thereto, and had it, &c. And afterwards they the said *E. F.* and *G.* came again into the same court here in that same term in their proper persons: And the said *J. W.* altho' he was solemnly demanded, did not return, but departed in despite of the court, and made default; therefore it was then and there considered by the same court, that the said *E. F.* and *G.* should recover their seisin against the said *E. B.* and *J. W.* of the messuages aforesaid, with the appurtenances; and that the said *E. B.* and *J. W.* should have of the land of the said *T. T.* to the value, &c. and that the said *T. T.* moreover should have of the land of the said *J. W.* to the value, &c. and that the said *J. W.* should be in mercy, &c. And thereupon the said *E. F.* and *G.* then prayed the writ of the then said lord the king to the then sheriffs of *London* aforesaid to be directed, to make plenary seisin to him of the messuages aforesaid, with the appurtenances; and it was granted to him returnable here, on the morrow of the ascension of our Lord: At which day came here the said *E. F.* and *G.* in their proper persons; and the said then sheriffs of *London, to wit, B. T.* and *J. K.* knts.

Imparlance.

Common vouchee makes default.

Judgment against the tenants.

Against first vouchee.

Against common vouchee.

Writ of seisin.

knts returned, that they by virtue of that writ to them directed, did on the 1st day of *May* then last past make full seisin to them the said *E. F.* and *G. L.* of the messuages aforesaid, with the appurtenances, as by the said writ was commanded to them, *&c.* as by the said record and process thereof remaining here in court more fully it doth appear. Which recovery, and the execution thereof in form aforesaid had, were had as to the tenements aforesaid, with the appurtenances, whereof the said *J. T.* is returned tenant as aforesaid, to the uses in the said indenture quadripartite herein before specified, and to no other use. And the said *W. S.* further saith, that the said *T. T.* never had any issue male or female of his body on the body of the said *E.* his wife begotten born alive. And the said *W. S.* further saith, that the said *E.* before the day of the suing forth of the aforesaid writ of *Scire Facias, to wit,* on the 1st day of *July* in the year of our Lord 1769, at the parish of St. *Andrew Holborn* aforesaid died; and this the said *W. S.* is ready to verify: Wherefore he prayeth judgment, and his execution of the debt and damages aforesaid against the said *J. T.* of the aforesaid tenements, with the appurtenances, of which he is so returned tenant as aforesaid, to be adjudged to him the said *W. S. &c.*

Joseph Sayer.

Demurrer.

And the said *J. T.* saith, that the replication aforesaid of the said *W. S.* to the plea

of

of the ſaid *J. T.* laſt above pleaded, and the matter therein contained are not ſufficient in law for the ſaid *W. S.* to have execution againſt the ſaid *J. T.* of the debt and damages aforeſaid, to be levied of the ſaid tenements of which he is above returned tenant as aforeſaid, to which ſaid replication in manner and form above pleaded the ſaid *J. T.* hath no need nor is he obliged by the law of the land to anſwer; and this he is ready to verify: Wherefore for want of a ſufficient replication in his behalf, the ſaid *J. T.* prayeth judgment, and that the ſaid *W. S.* may be barred from having execution againſt him of the debt and damages aforeſaid to be levied of the ſaid tenements of which he is above returned tenant as aforeſaid, &c.

Geo. Wilſon.

Joinder

And the ſaid *W. S.* foraſmuch as he hath alledged ſufficient matter in law in his replication aforeſaid to the aforeſaid plea of the ſaid *J. T.* laſt above pleaded, to have execution againſt the ſaid *J. T.* of the debt and damages aforeſaid, to be levied of the aforeſaid tenements, whereof he the ſaid *J. T.* is above returned tenant as aforeſaid, which he is ready to verify, which ſaid matter the ſaid *J. T.* doth not gainſay, nor in any wiſe anſwer thereto, but doth wholly refuſe to admit the ſaid replication, as before prayeth judgment and execution againſt the ſaid *J. T.* of the debt and damages aforeſaid, to be levied of the tenements aforeſaid, whereof he

he is above returned tenant as aforesaid, to be adjudged to him. *John Belfield.*

To the King's most Excellent Majesty.

The humble memorial of T. *earl of* E. *deputy (with your majesty's approbation) to* G. *duke of* N. *earl marshal and hereditary marshal of* England,

Sheweth,

A memorial to his majesty for a Scire Facias *to repeal letters patent.*

THAT his late majesty king *George* I. was graciously pleased by his letters patent, bearing date the 18th day of *June* in the 6th year of his reign, to constitute and appoint *J. W.* esq; *Somerset* herald of arms during him his good behaviour;

That the said *J. W. Somerset* herald, hath for a course of many years last past absented himself from his duty of attending your majesty and your majesty's late royal father at court and parliament;

That the college of arms have been greatly injured by the said *J. W.*'s receiving fees without doing the duties incumbent on the said office, or accounting and paying his proportion towards the incident charges thereof;

That the said *J. W.* hath likewise presumed to publish the arms of the nobility and gentry of *England* in the margins of maps he hath lately published, without leave of the crown or consent of the officers of arms, whose rights and interests are thereby invaded.

Your memorialist therefore hereby submits the premisses to your majesty's royal consideration, and prays your majesty will be graciously pleased to issue your royal warrant to your majesty's attorney general, thereby authorising and directing him to cause a *Scire facias* to be sued out in your majesty's name, for repealing the said letters patent of the said *J. W. Somerset* herald, for such his misdemeanors and neglect of duty, he being (as your memorialist most humbly conceives) unworthy to continue longer in your majesty's service.

And your memorialist

shall ever pray.

Effingham M.

Whitehall, June 18, 1777.

His majesty is graciously pleased to refer this memorial to Mr. attorney or Mr. solicitor general to consider thereof, and report his opinion, what his majesty may fitly do therein. Whereupon his majesty will declare his further pleasure.

Francis North.

George R.

Warrant for [illegible]

WHEREAS our right trusty and well beloved cousin *T.* earl of *Effingham*, Deputy (with our approbation) to our right trusty and right intirely beloved cousin

cousin *C.* duke of *N.* earl marshal, and hereditary marshal of *England*, has by his memorial humbly represented unto us, that our late royal Father was graciously pleased by his letters patent, bearing date the 18th day of *June* in the 6th year of his reign, to constitute and appoint *J. W.* esq; *Somerset* herald of arms, during his good behaviour; that the said *J. W.* has for a course of many years last past absented himself from his duty of attending us and our late royal father at court and parliament; that the college of arms have been greatly injured by the said *J. W.*'s receiving fees without doing the duties incumbent on the said office, or accounting and paying his proportion towards the incident charges thereof; that the said *J. W.* has likewise presumed to publish the arms of the nobility and gentry of *England* in the margins of maps he has lately published, without our leave or consent of the officers of arms, whose rights and interests the memorial states were thereby invaded; the memorialist therefore prays that we would be graciously pleased to issue our royal warrants to you our attorney general, thereby authorising and directing you to cause a *Scire Facias* to be sued out in our name for repealing the said letters patent of the said *J. W.* for such his misdemeanors and neglect of duty, and as unworthy to continue longer in our service: And whereas we having referred the said memorial to you or our solicitor general; our said solicitor general by his report thereupon has humbly

certified

certified us, that upon receipt of the ſaid memorial he cauſed notice thereof and a copy to be ſent to the ſaid *J. W.* and he has been attended by the ſolicitor of the memorialiſt and the ſaid *J. W.* and alſo by *J. W.* himſelf, and upon conſidering the affidavits and arguments on both ſides, our ſaid ſolicitor general is humbly of opinion that the ſaid *J. W.* has been guilty of great neglect of duty, for which he is liable to have a *Scire facias* brought in our name in order to repeal his patent, unleſs we ſhall be graciouſly pleaſed to accept of his excuſes, and not put him to undergo a trial. But as it may be neceſſary with regard to many offices where no deputy can be made, and perſonal attendance is required, that they ſhould be given to underſtand that ſuch neglects of duty are not to be ſlightly paſſed over: And as the ſaid *J. W.* will have an opportunity of making his defence upon a trial, and even after a conviction it will ſtill be in our power to ſuſpend the entring of any judgment to vacate the patent; he humbly conceives it may be fitting for us to order a *Scias Facias* to be brought to repeal the ſaid *J, W.*'s patent; and for that purpoſe to iſſue our royal warrant to you, authorizing and directing you to cauſe ſuch *Scire facias* to be ſued out, if we ſhall be pleaſed ſo to do. We taking the premiſſes into our royal conſideration are graciouſly pleaſed to condeſcend thereunto. Our will and pleaſure therefore is, that you ſue out and proſecute a writ of *Scire facias* in our name, for re-

 pealing

pealing the ſaid *J. W.*'s patent. And we do hereby authoriſe and require you to do and perform all matters and things that may be requiſite and neceſſary in that behalf; and for ſo doing this ſhall be your warrant. Given at our court at *Kenſington* the 7th day of *September* 1777, and in the 17th year of our reign. *By his majeſty's command.*

To our truſty and well beloved our attorney general. *Francis North.*

A draught of the *Scire facias* is to be prepared, and the attorney ſigns under it as follows:

Attorney general's Fiat.

Let there be a writ of *Scire facias* iſſued according to the tenor within mentioned dated this 23d day of *October* 1777. *E. Thurlow.*

The attorney general's fee is 2 *l.* 2 *s.* 0 *d.*
His clerk's —— —— 0 *l.* 13 *s.* 4 *d.*

Scire facias *to revoke letters patent granted of the office of* Somerſet *herald.*

Recital of the letters patent.

GEORGE the Third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the ſheriff of *Middleſex* greeting. *Whereas* our late royal grandfather by his letters patent under his great ſeal of *Great Britain*, bearing date at *Weſtminſter* the 20th day of *June* in the 6th year of his reign, did of his ſpecial grace, and of his certain knowledge and mere motion, for himſelf his heirs and ſucceſſors, make, nominate and create, erect, conſti-

conſtitute and inveſt *J. W.* of *B.* in his county of *York*, eſq; one of his heralds at arms, and gave him that name commonly called *Somerſet*; and by the ſame letters patent gave and granted the ſtile, title, liberties and preheminences, with ſuch office convenient and agreeing of ancient time accuſtomed, which ſaid office *S. S.* eſq; otherwiſe *Somerſet*, then deceaſed, then lately had and enjoyed, To have and exerciſe the ſaid office, and the name, ſtile, title, liberties and preheminences aforeſaid, to the ſaid *J. W.* otherwiſe *Somerſet*, as long as he ſhould behave himſelf well in the ſame office. And further, our ſaid late royal father did by his ſaid letters patent, for himſelf, his heirs and ſucceſſors, grant to the ſaid *J. W.* for the exerciſe of the ſaid office, a certain annuity or annual rent of 40 marks of good and lawful money of *Great Britain*, to be had and received by the ſaid *J. W.* otherwiſe *Somerſet*, yearly, as long as he ſhould behave himſelf well in the ſame office, from the treaſurer of our ſaid late royal father, his heirs and ſucceſſors, at the receipt of his *Exchequer*, by the hands of the commiſſioners for his treaſury, or the treaſurer and chamberlain of our ſaid late royal father, his heirs and ſucceſſors, there for the time being, at the feaſt of St. *Michael* the archangel, and of the annunciation of the bleſſed virgin *Mary*, by equal portions; the firſt payment thereof to begin from the feaſt of St. *Michael* the archangel then laſt paſt, together with all other rights, fees, profits, advantages

vantages and emoluments whatſoever, to the ſame office due and accuſtomed, in as ample manner and form as *J. P.* eſq; *Somerſet*, Sir *T. St. G.* knt. *Somerſet*, *F. B.* eſq; *Somerſet*, or the ſaid *S. S. Somerſet*, or any other or others of the heralds of our ſaid late royal father, called *Somerſet*, then lately had and received for the exerciſe of the ſaid office, as by the ſaid letters patent inrolled in our *Chancery* more fully appears: *And whereas* the ſaid *J. W. Somerſet* at divers times within the ſpace of 13 years laſt paſt was required by the duty of his ſaid office, and ought perſonally to have attended the buſineſs and ſervice thereof; *and whereas* we are given to underſtand, that the ſaid *J. W. Somerſet* for the time laſt mentioned hath not perſonally attended the buſineſs and ſervice of his ſaid office, but hath abſented himſelf therefrom, and neglected the duty thereof, in contempt of us and to our prejudice; whereby the ſaid *J. W. Somerſet* hath incurred the forfeiture of his ſaid office, and of all his right, title and intereſt therein: Nevertheleſs we being willing to have further and more certain information of and concerning the truth of the ſaid premiſſes, and that right and juſtice ſhould be done therein, do command you that by good and lawful men of your bailiwic you make known to the ſaid *J. W. Somerſet*, that he be before us in our chancery aforeſaid in one month from the day of St. *Michael* next to come, whereſoever it then ſhall be, to ſhew if he hath or knoweth any thing to ſay why the

Aſſignment of breach of duty in non attendance.

Scire facias.

the ſaid letters patent and the inrolment thereof, for the reaſons aforeſaid, ought not to be cancelled, vacated and annulled, and reſtored to us in our chancery, there to be cancelled, and further to do and receive concerning the premiſſes whatſoever the ſaid court ſhall conſider in this behalf; and have you there the names of thoſe by whom you ſhall ſo cauſe it to be ſo made known to him, and this writ. Witneſs *John* archbiſhop of *C.* and other guardians and juſtices of the kingdom at *Weſtminſter* the 11th day of *October* in the 14th year of our reign.

Verney. Aſheton.

Label. To the ſheriff of *Middleſex*. *Scire facias* to revoke letters patent granted to *J. W.* eſq;

Verney. Aſheton.

The within named *J. W. Somerſet*, hath not any thing in my bailiwic, where or by which I can give him notice, as by this writ I am commanded, nor is the ſaid *J. W. Somerſet* found in the ſame.

The anſwer of
Henry Marſhal, eſq; and *Richard Hoare*, eſq; } Sheriff.

Teſtatum Sci' fa'. *GEORGE* the Third, by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, &c. To the ſheriff of *Northamptonſhire*, greeting: Whereas (*ut antea* to) and that right and juſtice ſhould

ſhould be done therein, by our writ to our ſheriff of the county of *Middleſex* we lately commanded him, that by (to) and that he ſhould have there the names of thoſe by whom he ſhould ſo cauſe it to be made known to him, and our ſaid writ; at which day in our ſaid writ contained, our ſaid ſheriff of *Middleſex* aforeſaid, *to wit*, *H. M.* eſq; and *R. H.* eſq; returned to us in our chancery aforeſaid, that the ſaid *J. W. Somerſet*, had not any thing in his bailiwic where or by which he could give him notice, as by the ſaid writ he was commanded, nor was the ſaid *J. W. Somerſet* found in the ſame, as by the return thereof, on the file of our chancery remaining on record, doth more fully appear: Whereupon it is ſufficiently teſtified before us in our chancery aforeſaid, that the ſaid *J. W. Somerſet* hath ſufficient in your bailiwic where or by which you may make it known to him: Therefore we command you, that by good and lawful men of your bailiwic you make known to the ſaid *J. W. Somerſet*, that he be before us in our chancery aforeſaid in eight days of St. *Martin* next to come, whereſoever we ſhall then be, to ſhew if he hath or knows any thing to ſay why (to) ſhall conſider in this behalf; and have you the names of thoſe by whom you ſhall ſo cauſe it to be made known to him, and this writ. Witneſs Ourſelf at *Weſtminſter* the 30th day of *October* in the 9th year of our reign.

Verney. Prewen.

GEORGE,

Sci. fac. *for executors to revive a judgment obtained by their testator.*

GEORGE, &c. To the sheriff of *Bucks* greeting: Whereas *J. D.* lately in our court, *to wit*, in the term of St. *Hilary* in the 9th year of our reign, before *Alexander Denton*, esq; Sir *John Fortescue Aland*, knt. and *Thomas Reeve*, esq; then our justices of the bench at *Westminster*, by the consideration of the same court recovered against *J. B.* late of *Chipping-Wycombe* in your county, innholder, otherwise called *J. B.* late of *Chipping-Wycombe* in the county of *Bucks*, innholder, as well a certain debt of 590 *l.* as 50 *s.* which to the said *J. D.* in our same court were adjudged for his damages which he had by reason of detaining that debt, whereof he is convicted, as by the record and proceedings thereof remaining in our same court manifestly appeareth; yet execution of that judgment still remaineth to be made, and the said *J. D.* is dead, as we have been informed by *W. C.* and *T. B.* executors of the testament and last will of the said *J. D.* And because we will that those things which are rightly done in our same court be duly put in execution, we command you, that by honest and lawful men of your bailiwic you give notice to the said *J. B.* that he be before our justices at *Westminster* from the day of the Holy *Trinity* in three weeks, to shew if he hath or knoweth any thing to say for himself why the said *W.* and *T.* ought not to have execution against him for the debt and damages aforesaid, according to the form of the recovery aforesaid, if to him it shall seem meet: And have you

there

there the names of them by whom you ſhall give him notice, and this writ. Witneſs, &c.

It was commanded the ſheriff, that whereas *J. D* lately in the court of the lord the now king before *Alexander Denton*, eſq; Sir *John Forteſcue Aland*, knt. and *Thomas Reeve*, eſq; then juſtices of him the lord the king of the bench here, *to wit*, at *Weſtminſter*, by the conſideration of the ſame court had recovered againſt *J. B.* late of *Chipping-Wycombe* in the county of *Bucks*, inn-holder, otherwiſe called *J. B.* of *Cheeping-Wycombe* in the county of *Bucks*, inn-holder, as well a certain debt of 500 *l.* as 50 *s.* which to the ſaid *J. D.* in the ſame court of our ſaid lord the king were adjudged for his damages which he had by reaſon of detaining that debt, whereof he is convicted, as by the record and proceedings thereof in the ſame court of the ſaid lord the now king here, *to wit*, at *Weſtminſter* aforeſaid remaining, manifeſtly appeareth; yet execution of the judgment aforeſaid ſtill remaineth to be made, and the ſaid *J. D.* is dead, as the king hath been informed by *W. C.* and *T. B.* executors of the teſtament and laſt will of the ſaid *J. D.* and becauſe, &c. that by honeſt, &c. the ſaid ſheriff cauſed the ſaid *J. B.* to know that he ſhould be here at this day, *to wit*, from the day of the Holy *Trinity* in three weeks, to ſhew if any thing, &c. why the aforeſaid *W. C.* and *T. B.* ought not to have execution againſt him for the debt and damages aforeſaid, according to the form of

Entry thereof on the roll.

 the

the recovery aforesaid; if, &c. And now here this day came the aforesaid *W. C.* and *T. B.* by *T. W.* their attorney, and presented themselves the fourth day against the aforesaid *J. B.* in the plea aforesaid; and he being solemnly required, did not come; and the now sheriff hath returned that he had nothing, &c. nor is to be found, &c. *Therefore* it is considered, that the aforesaid *W. C.* and *T. B.* have execution against the aforesaid *J. B.* of the debt and damages aforesaid by default, &c.

Trin. 10 & 11 *Geo.* 2. *Roll* 659.

Scire facias *in case, where one of the plts. married after judgment.*

GEORGE the second, &c. To the sheriffs of *London* greeting: *Whereas M. B.* and *G. B.* lately, *to wit*, in *Hilary* term in the 13th year of our reign, before Sir *John Willes*, knt. and his companions, then our justices of the bench at *Westminster*, by the consideration of that court recovered against *J. B.* late of, &c. 75*l.* for their damages which they had on occasion of the not performing certain promises and undertakings to the said *M.* and *G.* then lately made by the said *J.* at *L.* whereof he is convicted, as by the record and proceedings thereof remaining in our said court of the bench is manifestly apparent: *And whereas* the said *M.* after the recovery of the damages aforesaid, *to wit*, on the 1st day of *March* in the year of our Lord 1739, at *London* aforesaid, took to her husband one *P. S.* And altho' judgment

judgment is rendered in form aforesaid, yet execution of the said judgment still resteth to be made to them the said *P. M.* and *G.* as we have received information from the said *P. M.* and *G.* and because we are willing that such things as are rightly done in our said court should meet with a due execution; we command you that by honest and lawful men of your bailiwic, you cause it to be made known to the said *J.* that he be before our justices at *W.* in eight days of the Holy *Trinity*, to shew if he hath or knoweth any thing to say for himself why the said *P. M.* and *G.* ought not to have execution against him for the damages aforesaid, according to the form and effect of the said recovery, if it shall seem expedient to him; and have you there the names of them by whom you shall cause it to be made known to him, and this writ. Witness Sir *John Willes*, knt. at *Westminster*, the 19th day of *May* in the 13th year of our reign.

Borret.

Form of a Scire facias on [illegible] [illegible]

Devonshire, *to wit*, THE sheriff was commanded, that whereas *E. P.* clerk, and *R. F.* the younger, gentleman, lately, that is to say, in the term of the Holy *Trinity* in the tenth year of his present majesty's reign, in his said majesty's court of the bench here, by the consideration of the same court had recovered against *R. C.* late of, *&c.* clerk, as well a certain debt of 250 *l.* as also 50 *s.* which in the same court were adjudged to the said *E. P.* and *R. F.* for

their damages, which they had sustained by reason of the detaining the said debt, whereof he is convicted, as by the record and process thereof remaining in the same court manifestly appeareth: And whereas the said *E.* afterwards died, and the said *R. F.* survived him; nevertheless execution of the said judgment yet remaineth to be made, as the king hath been informed by the said *R. F.* and because, &c. that by honest, &c. he should make known to the said *R. C.* that he should be here at this day, *to wit*, on the morrow of the ascension of our Lord, to shew if any thing, &c. why the said *R. F.* ought not to have execution against him for the debt and damages aforesaid, according to the form of the said recovery, if, &c. And now at this day the said *R. F.* cometh here in his proper person, and offereth himself the fourth day against the said *R. C.* in the plea aforesaid; and he, though solemnly called, cometh not; and the sheriff now returneth, that he hath nothing, &c. nor is to be found, &c. therefore it is considered, that the said *R. F.* have execution against the said *R. C.* for the debt and damages aforesaid, by default, &c.

Return Nihil.

Scire facias *on a recognizance of bail in debt.*

GEORGE the third, &c. To the sheriff of *Middlesex*, greeting. Whereas *W. N.* late of, &c. and *W. W.* late of, &c. lately, that is to say, in the term of *Easter* in the 17th year of our reign, in our court of common pleas, before Sir *William De Grey*, knight, and his companions, our justices of our said court of common pleas at *Westminster*

ster, acknowledged, and each of them did acknowledge to owe to *J. M.* the sum of 80 *l.* which said sum of 80 *l.* they the said *W. N.* and *W. W.* for themselves and their heirs willed and granted, and each of them for himself and his heirs did will and grant, to be made of the lands and chattels of each of them, and to be levied to the use and behoof of the said *J.* *And whereas* also *A. A.* late of, *&c.* otherwise called, *&c.* the same term, before the same justices in our said court acknowledged himself to owe to the said *J.* the sum of 160 *l.* which said sum of 160 *l.* the said *A.* for himself and his heirs, willed and granted to be made of his lands and chattels, and to be levied to the use and behoof of the said *J.* under this condition, that if judgment should happen to be given in our said court for the said *J.* against the said *A.* in a certain plea of debt upon demand 200 *l.* by the said *J.* against the said *A.* in our said court brought, then the said *A.* should satisfy as well the said debt of 200 *l.* as also all the damages which to the said *J.* against the said *A.* in our said court by occasion of detaining the said debt should be adjudged, or render his body on that occasion to our prison of the *Fleet*; and altho' the said *J.* in the term of the Holy *Trinity* in the 18th year of our reign, before the aforesaid Sir *William De Grey*, knight, and his companions, our justices of our said court of common pleas at *Westminster*, by the consideration of the same court recovered against the said *A.* as well the said debt

 of

of 200*l.* as also 15*l.* which to the said *J.* against the said *A.* in our same court were awarded for his damages which he had by occasion of detaining the said debt, whereof he is convicted, as by the record and proceedings thereof in our said court now remaining manifestly appeareth: Nevertheless the said *A.* hath not satisfied the said *J.* for the debt and damages aforesaid, nor rendered his body to our said prison upon the occasion aforesaid, according to the form of the said recognizance, as we have been given to understand by the information of the said *J.* And because we are willing that those things which are rightly done and acknowledged in our said court, should be brought to a due execution, we command you, that by honest and lawful men of your bailiwic you make known to the said *W. N.* and *W. W.* and *A. A.* that they be before our justices at *Westminster* on the morrow of *All Souls*, to shew if they know of or have any thing to say for themselves, that is to say, the said *W. N.* why the said 80*l.* by him in form aforesaid acknowledged should not be made upon his lands and chattels, the said *W. W.* why the said 80*l.* by him in form aforesaid acknowledged should not be made upon his lands and chattels, and the said *A. A.* why the said 160*l.* by him in form aforesaid acknowledged, should not be made of his lands and chattels, to the use and behoof of the said *J.* to be levied according to the form of the said recognizance, if to them it shall seem expedient: And have

you

you there the names of thoſe by whom you ſhall give ſuch notice, and this writ. Witneſs Sir *William De Grey*, knt. at *Weſtminſter*, the 9th day of *November* in the 19th year of our reign.

Eaſter 6 *Ann. Ro.* 336.

Entry of a recognizance of bail on a Habeas corpus cum cauſa.

London, to wit, *IT was commanded* to the mayor, aldermen and ſheriffs of *London*, that immediately after the receipt of this writ they ſhould have the body of I. S. detained as it was ſaid in the priſon of the lady the queen under their cuſtody, by whatſoever name the ſaid *I.* ſhould be called in the ſame, together with the day and cauſe of the taking and detaining of the ſaid *I.* before Sir *Thomas Trevor*, knt. chief juſtice of the ſaid lady the queen of the bench, at his chamber in the *Inner Temple*, *London*, to do and receive all and ſingular thoſe things which the ſaid chief juſtice ſhould then and there conſider of him in that behalf: And that they ſhould have there that writ, &c.

The Habeas Corpus.

The return.

Afterwards, to wit, on the 19th day of *February* in the year of our Lord 1706, the ſaid *I.* came in his proper perſon, under the cuſtody of the ſaid ſheriffs, by virtue of the ſaid writ, and the ſaid ſheriffs, namely Sir *A. C.* knt. and Sir *W. B.* knt. now return, that the execution of the ſaid writ appeareth in a certain ſchedule annexed to that writ, the tenor of which ſaid ſchedule followeth in theſe words: We Sir *A. C.* knt. and Sir *W. B.* knt. ſheriffs of the city of *London* afore-

 ſaid

ſaid, certify to Sir *Thomas Trevor*, knt. chief juſtice of the lady the queen of the bench, *&c.* named in the writ annexed to this ſchedule, that before the coming of the ſaid writ to us, *to wit*, on the 28th day of *January* in the 5th year of the reign of our lady *Anne*, by the grace of God, of *England*, *Scotland*, *France*, and *Ireland*, queen, defender of the faith, *&c.* *I. S.* named in the ſaid writ, was taken at *London* aforeſaid, and detained in the priſon of the ſaid lady the queen under our cuſtody, by virtue of a certain plaint levied in the court of the ſaid lady the queen held on the day and year aboveſaid, before me the ſaid Sir *A. C.* knt. one of the ſheriffs of the city aforeſaid, againſt the ſaid *I.* by the name of, *&c.* at the ſuit of *E S.* in a plea of debt upon demand of 40*l.* whereupon the ſaid parties have pleaded to an iſſue of the country, and ſo it dependeth undetermined; and this is the cauſe of the taking and detaining of the ſaid *I. S.* whoſe body we have ready. *Afterwards*, to wit, on the ſaid 19th day of *February* in the year of our Lord 1706, aforeſaid, before *Robert Tracey*, eſq; one of the juſtices of the court here, at his chamber ſituate in *Serjeants Inn* in *Fleet-ſtreet*, came the ſaid *I.* and *E. W.* of *Staple's Inn*, *London*, gent. and *M. J.* of *Fetter-Lane*, *London*, gent. in their proper perſons, and undertook, and each of them undertook, *to wit*, the ſaid *I.* in the ſum of 80*l.* and the ſaid *E.* and *M.* for themſelves ſeparately in the ſum of 40*l.* that the ſaid *I.* ſhould appear here in his proper perſon, or by

Recognizance.

by his attorney sufficient in the law, to the action or writ of the said *E* of and upon the cause aforesaid, before the end of two terms then next following, to be sued out and prosecuted in the same term here, and to answer to the said *E.* in the plea aforesaid; and also if it should happen that judgment after the appearance of the said *I.* made in the court here should be given for the said *E.* to satisfy the said *E.* of the debt to be recovered or adjudged against the said *I.* in the plea aforesaid, or that he the said *I.* should render himself on that occasion to the prison of the said lady the queen of the *Fleet*, which said sum of 80 *l.* acknowledged by the said *I.* in form aforesaid, the said *I.* acknowledged to be made of his lands and chattels; and which said sum of 40 *l.* separately acknowledged by the said *E.* and *M.* in form aforesaid, the said *E.* and *M.* and each of them separately acknowledged to be made of their lands and chattels, and to be levied to the use and behoof of the said *E.* in form aforesaid, if it should happen that the said *I.* should make default in any of the premisses, and be convicted thereof in lawful manner: *Which* said recognizance the said justice afterwards, *to wit*, on the 30th day of *April* in this same term, by his own proper hands delivered here into court to be inrolled of record, *&c.*

Scire facias *on a recognizance of bail upon a* Habeas Corpus cum causa.

ANNE, *&c.* *To* the sheriff of *Middlesex* greeting. *Whereas I. S. E. W.* of *London*, gent. and *M. J.* of *London*, gent. on the 19th day of *February* in the year of our

 Lord

Lord 1706. before *Robert Tracy*, esq; one of the justices of our court of the bench, at his chambers situate in *Serjeants Inn* in *Fleet-street*, *London*, in their proper persons undertook, and each of them undertook, *to wit*, the said *I.* in the sum of 80*l.* and the said *E* and *M* for themselves separately in the sum of 40*l.* that the said *I.* should appear in our court before our justices at *Westminster* in his proper person, or by his attorney sufficient in the law, to the action or writ of one *E. S.* against him the said *J.* of a plea of debt upon demand 40*l.* to be sued out and prosecuted in our same court before the end of two terms then next following, and to answer to the said *E.* in the plea aforesaid; and also if it should happen that judgment after the appearance of the said *I.* made in the same court should be given for the said *E.* then to satisfy the said *E.* of the debt and damages to be recovered or adjudged against the said *I.* in the plea aforesaid, or that he the said *I.* should render himself on that occasion to our prison of the *Fleet*, which said sum of 80*l.* acknowledged by the said *I.* in form aforesaid, the said *I.* acknowledged to be made of his lands and chattels, and which said sum of 40*l.* separately acknowledged by the said *E.* and *M.* in form aforesaid, the said *E.* and *M.* and each of them separately acknowledged to be made of their lands and chattels, and to be levied to the use and behoof of the said *E.* if it should happen that the said *I.* should make default in any of the premisses, and

be

be thereof lawfully convicted: *Which* said recognizance the same justice afterwards, *to wit*, on the 30th day of *April* in the sixth year of our reign, by his own proper hand delivered into the said court, to be inrolled of record, and it is inrolled there, as by the record thereof remaining in our same court manifestly appeareth of record; *And altho'* the said *E.* before the end of two terms next after the said time of the said recognizance made in form aforesaid, *to wit*, on the 23d day of *May* in the 6th year of our reign, sued out our certain original writ of and upon the said plea, out of our court of chancery, the same court being at *Westminster* in our country of *Middlesex*, against the said *I.* returnable and returned in our court before our justices at *Westminster* on the morrow of the Holy *Trinity* then next following; to which said original writ sued out and prosecuted by the said *E.* in form aforesaid, the said *I.* by *J. C.* then his attorney, appeared in our same court before our justices at *Westminster*, according to the form of the said recognizance, and in the same plea in our said court pleaded to issue; and in such manner it was proceeded thereupon in our same court before our justices at *Westminster*, that afterwards, *to wit*, in the term of the Holy *Trinity* in the 6th year of our reign, before Sir *Thomas Trevor*, knt. and his companions, our justices of the bench aforesaid, the said *E.* by the consideration of the same court recovered against the said *I.* as well the said debt of 40 *l.* as ———, which then were

Recognizance inrolled.

4 adjudged

adjudged to the said *E.* in our same court for her damages which she then had by occasion of the detaining that debt, whereof he is convicted, as manifestly appeareth by the record and process therein remaining in our court before our justices at *Westminster*: *Nevertheless* the said *I.* hath not yet satisfied the said *E.* of the debt and damages aforesaid recovered in form aforesaid, nor hath he yet rendered his body in execution of the said judgment to our prison of the *Fleet*, according to the form and effect of the said recognizance, as we have been informed by the said *E.* *And* because we would that those things, which in our said court are rightly acted, should be demanded by a due execution; *We command* you, that by good and lawful men of your bailiwic you make known to the said *I. E.* and *M.* that they be before our justices at *Westminster* on the octave of St. *Hilary*, to shew if any thing they have or know to say for themselves, *to wit*, the said *I.* why the said 80 *l.* by him in form aforesaid acknowledged, of his lands and chattels, and the said *E.* why the said 40 *l.* acknowledged by him in form aforesaid, of his lands and chattels, and also the said *M.* why the said 40 *l.* also acknowledged by him in form aforesaid, of his lands and chattels, ought not to be made and levied to the use and behoof of the said *E.* according to the form of the said recognizance, if it shall seem expedient to them, and have there the names of

Breach.

of them by whom you shall make known to them, and this writ. Witness, *&c.*

Scire facias by administrator against bail, after judgment affirmed in error.

GEORGE III. by the grace of God, of *Great Britain*, *France*, and *Ireland*, king, defender of the faith, *&c.* To the sheriff of *Middlesex* greeting. Whereas *J. S.* late of *Forster Lane*, *London*, painter-stainer, and *W W.* the younger, late of the *Bank Side Southwark*, iron-founder, lately, that is to say, in the term of St. *Hilary* in the 3d year of our reign, in our court of common pleas, before Sir *R. E.* knt. and his companions, then our justices of our said court of common pleas at *Westminster*, acknowledged, and each of them did acknowledge to owe to *G. S.* the younger, by the name of *G. S.* the sum of 200 *l.* which said sum of 200 *l.* they the said *J S* and *W. W.* for themselves and their heirs willed and granted, and each of them for himself and his heirs did will and grant to be made of the lands and chattels of each of them, and to be levied to the use and behoof of the said *G. S.* upon this condition, That if judgment should happen to be given in our said court for the said *G. S.* against *K. E.* late of *Westminster* in your county, esq; in a plea of trespass upon the case upon promise, to the damage of the said *G.* of 120 *l* by the said *G. S.* against the said *K.* in our said court brought, then the said *K.* should satisfy the said *G. S.* all the damages which to the said *G. S.* in our said court in the said plea of trespass upon the case should be adjudged, or should render his

his body on that occasion to our prison of the *Fleet*. And although the said *G. S.* in the same term before the aforesaid Sir *R. E.* knt. and his companions, then our justices of our said court of common pleas at *Westminster*, by the consideration of our said court recovered against the said *K.* 115*l.* 10*s.* which to the said *G.* in our said court were adjudged for his damages which he sustained on occasion of the said trespass on the case aforesaid, and whereof he is convicted, as by the record and proceedings thereupon, which in our court before us by virtue of our writ to correct errors brought by the said *K.* of and concerning the premisses, we lately caused to be brought in our court before us, and which in our court before us now remaining in all things affirmed may manifestly appear. And whereas the said *G.* afterwards, *to wit*, the 16th day of *March* in the year of our Lord 1730. at *Westminster* aforesaid, died intestate, and after whose death administration of all and singular the goods and chattels, rights and credits which were the said *G.*'s at the time of his death, by *W.* by divine Providence archbishop of *Canterbury*, primate of all *England* and metropolitan, on the 6th day of *April* in the year of our Lord 1731. at *London* in due form of law was committed to *G. S.* father of the said *G. S.* the younger; as on the information of the said *G. S.* the father, we have been given to understand. And whereupon in our said court before us it was lately considered, That the aforesaid *G. S.* the father might have his execution against the said

ſaid *K.* for the damages aforeſaid; yet the ſaid *K.* hath not ſatisfied the ſaid *G. S.* the younger, in his life time, nor the ſaid *G.* the father, ſince the death of the ſaid *G.* the younger, the damages aforeſaid; neither hath the ſaid *K.* ſurrendered his body on that occaſion to the priſon of the *Fleet*, as on the information of the ſaid *G. S.* the father, we are given to underſtand. And becauſe we are willing that thoſe things which in like manner are required, and in our ſaid court are rightly done, ſhould be brought to a due execution, We command you, that by honeſt and lawful men of your bailiwic you make known to the ſaid *J. S.* and *W. W.* that they may be before our juſtices at *Weſtminſter* on the morrow of the aſcenſion of our Lord, to ſhew if any thing they know of or have to ſay for themſelves, that is to ſay, the ſaid *J. S.* why the ſaid 200 *l.* by him in form aforeſaid acknowledged, ſhould not be made upon his lands and chattels, and the ſaid *W. W.* the younger, why the ſaid 200 *l.* by him in form aforeſaid acknowledged, ſhould not be made upon his lands and chattels and be levied according to the form of the ſaid recognizance, if to them it ſeems expedient. And have you there the names of them by whom to them you give ſuch notice, and this writ. Witneſs.

Scire facias *againſt bail.*

GEORGE III. by the grace of God, king of *Great Britain*, *France*, and *Ireland*, defender of the faith, *&c.* To the ſheriff of *Middleſex* greeting. Whereas *F. S.* late of, *&c.*

&c. *F. F.* late of, &c. and *T. P.* late of, &c. lately in our court, *to wit*, in the term of the Holy *Trinity* in the year of our reign, before Sir *R. E.* knt. and his companions our justices of the bench at *Westminster*, acknowledged, and each of them did acknowledge to owe to *E. P.* and *W. F.* the sum of 38 *l.* which said sum of 38 *l.* they the said *T. S. F.* and *T. P.* for themselves and their heirs, willed and granted, and each of them for himself and his heirs did will and grant to be made of their and of each of their lands and chattels, and to be levied to the use and behoof of the said *E.* and *W.* upon this condition, that if judgment should happen to be given in our said court for the aforesaid *E.* and *W.* against *T. T.* late of, &c. in a certain plea of trespass on the case to the damage of the said *E.* and *W.* of 30 *l.* prosecuted by the said *E.* and *W.* against the said *T. T.* in our said court; Then the said *T. T.* should satisfy all damages which should be adjudged to the said *E.* and *W.* in our said court, against the said *T. T.* in the plea aforesaid, or should render his body on that occasion to the prison of the *Fleet*. And although the said *E.* and *W.* in the term of in the year of our reign, before the said Sir *R. E.* knt. and his companions, our justices of the bench at *Westminster* aforesaid, by the consideration of the said court recovered against the said *T. T.* 30 *l.* which were adjudged to the said *E.* and *W.* in our said court, for their damages which they had by occasion of the said trespass,

The whole damage and costs as taxed.

paſs on the caſe whereof he is convicted, as by the ſaid record and proceedings therein in our ſaid court remaining, plainly appeareth; yet the ſaid *T. T.* has not ſatisfied the ſaid damages to the ſaid *E.* and *W.* nor rendered his body, on the occaſion aforeſaid, to the priſon of the *Fleet*, according to the form of the ſaid recognizance, as from the information of the ſaid *E.* and *W.* we are given to underſtand. And becauſe we will that thoſe things which in our ſaid court are rightly acted and acknowledged be duly executed, We command you that by good and lawful men of your bailiwic you make known to the ſaid *F. S. F.* and *T. P.* that they be before our juſtices at *Weſtminſter* on the morrow of the purification of the bleſſed virgin *Mary*, to ſhew if any thing they have for themſelves, or know to ſay, *to wit*, the ſaid *J. S.* wherefore the ſaid 38 *l.* by him in form aforeſaid acknowledged, ought not to be made of his land and chattels; the ſaid *F.* wherefore the ſaid 38 *l.* by him in form aforeſaid acknowledged, ought not to be made of his lands and chattels, and the ſaid *T. P.* why the ſaid 38 *l.* by him in form aforeſaid ought not to be made of his lands and chattels, and levied to the uſe and behoof of the ſaid *E.* and *W.* according to the form of the ſaid recognizance, if to them it ſhall ſeem expedient; and have you there the names of them by whom you ſhall make it known unto them, and this writ. Witneſs Sir *William De Grey*, knt. the 23d of *January* in the year of our reign. *De Grey.*

Trespass.

Declaration in trespass for breaking the plaintiff's house, assaulting and lying with his wife. Postea 419.

Middlesex, *to wit*, M. *B.* late of, &c. was attached to answer *J. S.* of a plea, wherefore he broke and entered the house of the said *J. S.* at the parish of St. *James Westminster* in the county of *M.* aforesaid, and then and there with force and arms, made an assault on *E.* the wife of the said *J.* and then and there beat, wounded and ill-treated, carnally knew and committed adultery with the said *E.* and did other injuries to him, to the great damage of the said *J.* and against the peace of our lord the present king, &c. *And* whereupon the said *J.* by *A. B.* his attorney complaineth that the said *M.* on the 6th day of *October* in the seventeenth year of the reign of our sovereign lord *George* III. now king of *Great Britain*, &c. and at divers other days and times between the said 6th day of *October* and the second day of *March* then next following, at the parish of St *James Westminster* in the county of *M.* aforesaid, with force and arms broke and entered the house of the said *J.* and with force and arms made an assault on *E.* the wife of the said *J.* and then and there beat, wounded, ill-treated and committed adultery with the said *E.* whereby the said *J.* for the whole time aforesaid there intirely lost the comfort, love and affection of the said *E.* his wife, and then and there did other injuries to the said *J.* to the great damage of the said *J.* and

and againſt the peace of our ſaid lord the king: Wherefore the ſaid *J.* ſaith, that he is injured, and hath damage to the value of 1000 *l.* and thereof he bringeth ſuit, *&c.*

Trin. 17 *Geo.* 3.

Memorandum of a declaration againſt an attorney.

Dorſetſhire, BE *it remembered*, that on the 20th day of *April* in *Eaſter* term in the 16th year of the reign of our lord the king that now is, *R. W.* Dr. of phyſic, came here by *J. S.* his attorney, and exhibited to the juſtices of our lord the king of the bench here, his bill againſt *W. B.* gent. one of the attornies of the court of our ſaid lord the king of the bench here, preſent here in court in his proper perſon, the tenor of which ſaid bill followeth in theſe words, *to wit*, *To* the juſtices of the lord the king of the bench, *Dorſetſhire*, *R. W.* Dr. of phyſic, by *J. S.* his attorney complaineth of *W. B.* gent. one of the attornies of the court of the lord the king of the bench, preſent here in court in his proper perſon, *for that* the ſaid *W.* on the 1ſt day of *May* in the year of our Lord 1777, and at diverſe other days and times between that day and the 1ſt day of *May* in the year of our Lord 1778, with force and arms made an aſſault upon *M.* the wife of the ſaid *R. W.* at *S.* in the ſaid county, and her the ſaid *M.* then and there raviſhed, embraced and carnally

Bill againſt an attorney of C. B. in a plea of treſpaſs and aſſault for criminal converſation with the plaintiff's wife.

nally knew, whereby the said *R.* lost and was deprived of the comfort and society of his said wife, and other injuries did to him, to the great damage of the said *R. W.* and against the peace of our lord the present king, *&c.* Wherefore the said *R.* saith that he is injured, and hath sustained damage to the value of 1000 *l.* and thereupon he prayeth remedy, *&c.* Pledges for prosecuting, *to wit*, *J. D.* and *R. R.*

Pledges.

Imparlance.

And the said *W. B.* in his proper person cometh and defendeth the force and injury when, *&c.* and prayeth leave to imparle thereto here, until *Friday* next after the morrow of the Holy *Trinity*; and he hath it, *&c.* The same day is given to the said *R. W.* here, *&c.* *At* which day cometh here as well the said *R. W.* by his said attorney, as the said *W. B.* in his proper person. And the said *R. W.* requireth that the said *W. B.* may answer his said bill, *&c.* *And* the said *W. B.* in his proper person defendeth the force and injury when, *&c.* And saith that he is in nothing guilty of the premisses above laid to his charge, as the said *R. W.* above complaineth against him; and of this he putteth himself upon the country; *And* the said *R. W.* likewise. *Therefore* the sheriff is commanded, that he cause to come here on *Wednesday* next after three weeks of the Holy *Trinity*, twelve, *&c.* By whom, *&c.* Who neither, *&c.* To recognize, *&c.* Because as well, *&c.*

Plea, Not guilty.

Issue.

Venire awarded.

Declaration in trespass, for breaking plain-

Middlesex, to wit, *G. F.* late of, *&c.* was attached to answer unto *M. B.* spinster, in a plea,

plea, why he the ſaid *G.* with force and arms the houſe of the ſaid *M.* at the pariſh of ——— in the county aforeſaid, did break and enter, and there without the leave, and againſt the will of the ſaid *M.* a long time continued, and the goods and chattels of the ſaid *M.* there lately found to the value of 10 *l.* did take, ſeiſe, carry away, and to his own proper uſe convert and diſpoſe, and other wrongs to the ſaid *M.* did, to the great damage of the ſaid *M.* and againſt the peace of our lord the now king, *&c.* *And* whereupon the ſaid *M.* by *W. W.* her attorney complaineth, *That* the ſaid *G.* with force and arms, *&c.* on the day of in the year of the reign of *George* II. king of *Great Britain*, &c. the houſe of the ſaid *M.* at the pariſh aforeſaid in the county aforeſaid, did break and enter, and there without the leave and againſt the will of the ſaid *M.* continued a long time (*to wit*) for the ſpace of 24 hours, and the goods and chattels, *to wit*, one feather bed, *&c.* of the ſaid *M.* there lately found, to the value of the aforeſaid 10 *l.* did take, ſeiſe, carry away, and to his own proper uſe convert and diſpoſe; and other wrongs, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* Whereupon the ſaid *M.* ſaith that ſhe is injured, and hath damage to the value of 10 *l.* and thereof ſhe bringeth ſuit, *&c.*

tiff's houſe, tarrying there and carrying away her goods.

Oxfordſhire, to wit, *M. F.* late of, *&c.* was attached to anſwer to *S. S.* of a plea, wherefore he the ſaid *M.* with force and arms the cloſe of the ſaid *S.* in the pariſh of

Declaration in treſpaſs, for breaking plaintiff's cloſe, treading down the graſs, &c.

 Waterperry

laid specially. C. B.

Waterperry in the said county of *O.* broke and entered, and the grass late growing there to the value of 5*l.* trod down and consumed with his feet and the feet of his servants, by his and their walking thereon, and other grass late growing there of the said *S.* to the value of 5*l.* trod down and consumed with horses, oxen, cows and hogs, and other grass of the said *S.* late growing there, to the value of 5*l.* with carts and carriages trod down and consumed, and the earth and soil thereof tore up and plowed, and six cart-loads of flooded grass laid down, unloaded and placed in the said close of the said *S.* and permitted the said flooded grass to continue there for a long time, and also another close of the said *S.* in the parish aforesaid broke and entered, and the grass there late growing to the value of 10*l.* with his feet and the feet of his servants, by his and their walking thereon, and with horses and dogs, by hunting in the said close, trod down and consumed; and the hedges, fences, gates and ditches of the said *S.* late being there, to the value of 10*l.* broke down, destroyed, laid to the ground and filled up; and did him other wrongs to the great damage of the said *S.* and against the peace of our sovereign lord the king. *And* whereupon the said *S.* by *E. R.* his attorney complaineth, *That* the said *M.* on the 2[illegible]th day of *July* in the year of our Lord 1776, at the parish of *W.* in the said county of *O.* with force and arms broke and entered a close of the said *S.* containing ten acres, called *Hoghill*, in the said

parifh of *W*. and the grafs of the faid *S*. late growing there, to the value, *&c.* trod down and confumed with his feet and the feet of his fervants, by his and their walking thereon, and fed on, trod down and confumed the faid grafs with horfes, oxen, cows and hogs, and other grafs of the faid *S*. late growing there, to the value, *&c.* with carts and carriages trod down and confumed, and the earth and foil thereof then and there tore and plowed up with the faid carts and carriages, and fix cart-loads of flooded grafs then and there laid down, unloaded and placed, and permitted the fame grafs fo laid down and placed, to continue in the faid clofe for the fpace of one month from thence following, and alfo continuing the faid trefpafs as to the faid treading down, confuming and feeding on the grafs, and alfo tearing and plowing up the earth and foil of the faid clofe, at diverfe days and times from the faid 20th day of *July* in the year aforefaid to the 20th day of *October* following; and alfo that he the faid *M*. on the 1ft day of *April* in the year of our Lord 1773, at the parifh of *W*. aforefaid, broke and entered another clofe of the faid *S*. there being, called the *Ewe ground*, and the grafs of the faid *S*. then late growing there, to the value, *&c.* trod down and confumed with his feet and the feet of his fervants, by his and their walking thereon, and alfo with horfes and dogs, by their running thereon, in his the faid *M*. and his fervants then and there hunting with the faid horfes and dogs in the

Continuando.

faid laft mentioned clofe, and then and there broke down and deftroyed by the faid hunting of the faid *M.* and his fervants, with the faid horfes and dogs, the hedges, fences, gates and ditches of the faid *S.* then and there, *to wit*, 20 perches of hedges and 20 perches of fences, and 20 perches of ditches, and five gates then and there being, of the value, *&c.* then and there broke, deftroyed, laid to the ground, and filled up, continuing the faid laft mentioned trefpafs at divers days and times from the faid 1ft day of *April* in the faid year of our Lord 1773, to the day of the iffuing forth of the original writ of the faid *S.* and then and there did him other wrongs, *&c.* to the great damage, *&c.* againft the peace, *&c.* whereupon the faid *S.* declareth he is injured and damaged to the value of [illegible]0*l.* and thereof he bringeth fuit, *&c.*

Continuando.

Plea as to part Not guilty.

And the faid *M.* by *H. H.* his attorney cometh and defendeth the force and injury when, *&c.* *And as to* the coming with force and arms, and whatever is againft the peace of his faid majefty, and all the faid trefpafs above fuppofed to be done, except the breaking and entring of the faid clofe called *Heg-*[illegible], in which, *&c.* and the treading down and confuming of the grafs aforefaid there growing with his feet and the feet of his fervants, by walking thereon, and the feeding on, treading down and confuming the grafs aforefaid there growing with the faid horfes, and the treading down and confuming other the grafs there growing with the faid

ſaid carts and carriages, and the tearing and plowing up with the ſaid carts and carriages the earth and ſoil aforeſaid there, ſaith that he is not guilty thereof as the ſaid *S.* hath above complained againſt him; and thereupon he putteth himſelf upon the country; *and* the ſaid *S.* doth ſo likewiſe: *And* as to the breaking and entering the ſaid cloſe called *Hoghill*, in which, *&c.* and the treading down and conſuming of the graſs aforeſaid there growing with his feet and with the feet of his ſervants, by walking thereon, and the feeding on, treading down, and conſuming the graſs aforeſaid there growing with the ſaid horſes, and the treading and conſuming other the graſs aforeſaid there growing with the ſaid carts and carriages, and the tearing and plowing up with the ſaid carts and carriages the earth and ſoil aforeſaid there, the ſaid *M. ſaith that* the ſaid *S.* ought not therefore to have his ſaid action againſt him, *becauſe* he ſaith, that the ſaid cloſe called *Hoghill*, in which the ſaid treſpaſs is above ſuppoſed to be done, at the ſaid time when, *&c.* was and is a piece of meadow containing 10 acres, parcel of a certain common meadow called *Hoghill* in the pariſh of *W.* aforeſaid. *And* the ſaid *M.* further ſaith, that long before the ſaid time when, *&c.* *E. R.* eſq; was ſeiſed in his demeſne as of fee as well of the ſaid cloſe in which, *&c* parcel, *&c.* as of another parcel of the ſaid common meadow containing by eſtimation two acres, with the appurtenances, at one and the ſame time; and be-

Iſſue.

As to the reſidue, that the locus in quo, &c. *was parcel of common meadow, that* E. R. *long before, &c. was ſeiſed in fee of the* locus in quo, &c. *and of another parcel of ground in the ſame meadow, to which he had no way but over the* locus in quo, &c. *that* E. R. *demiſed the ſaid other parcel of ground to the deft. who therefore juſtifies in uſing his way to the ſame, doing as little damage as he could.*

ing so seised thereof, the said *E.* had not any way to the said parcel of the said meadow containing two acres, except from *W.* aforesaid in the county of *B.* through and over the said close in which, *&c.* parcel, *&c.* into the said parcel of the said meadow containing by estimation two acres, and back again from that parcel of the said meadow into, through and over the said close in which, *&c.* to *W.* aforesaid, for the use and enjoyment of the said parcel of the said meadow containing by estimation two acres; *and* the said *E.* being so seised of the said parcel of the said meadow containing by estimation two acres, with the appurtenances, as aforesaid, he the said *E.* not then having any way to the said parcel of the said meadow containing two acres except from *W.* aforesaid in the said county of *B.* through and over the said close, in which, *&c.* parcel, *&c.* into the parcel of the said meadow containing by estimation two acres, and back again from that parcel of the said meadow into, through and over the said close in which, *&c.* to *W.* aforesaid, for the use and enjoyment of the said parcel of the said meadow containing by estimation two acres, before the said time when, *&c. to wit*, on the 26th day of *March* in the year of our Lord 1736, aforesaid, at the parish aforesaid, demised to the said *M.* the said parcel of the said common meadow containing by estimation two acres, with the appurtenances; To have and to hold to the said *M.* from thence at the will of the said *E.* and *M. by virtue* of

of which ſaid demiſe the ſaid *M.* entered into the ſaid parcel of the ſaid meadow ſo demiſed to him as aforeſaid, with the appurtenances, and has been from thenceforth hitherto poſſeſſed thereof, and being ſo poſſeſſed, he the ſaid *M.* of neceſſity had and ought to have a way from *W.* aforeſaid into, through and over the ſaid cloſe in which, *&c.* parcel, *&c.* into his ſaid parcel of his ſaid meadow, and back again from his ſaid parcel of his ſaid meadow into, through and over the ſaid cloſe in which, *&c.* parcel, *&c.* to *W.* aforeſaid, for the neceſſary uſe and enjoyment of the ſaid parcel of the ſaid common meadow; *and* therefore he the ſaid *M.* at the ſaid ſeveral times when, *&c.* went with his ſaid carts and carriages in the ſaid declaration mentioned, drawn by his ſaid horſes therein alſo mentioned, in the ſaid way from *W.* aforeſaid into, through and over the ſaid cloſe in which, *&c.* parcel, *&c.* into his ſaid parcel of the ſaid meadow, and back again from his ſaid parcel of the ſaid meadow into, through and over the ſaid cloſe in which, *&c.* parcel, *&c.* for the fetching, taking and carrying of the hay and graſs of the ſaid *M.* growing, ariſing and made in his ſaid parcel of the ſaid common meadow, with his ſaid horſes, carts and carriages, by himſelf and his ſaid ſervants in the ſaid way, as it was lawful for him; *and* in ſo doing he the ſaid *M.* and his ſaid ſervants neceſſarily trod down and conſumed with their feet in walking in the ſaid way a little of the graſs aforeſaid, then growing in the ſaid cloſe in which

which, &c. parcel, &c. and the ſaid horſes of the ſaid *M.* in their paſſing in the ſaid way through the ſaid cloſe in which, &c. parcel, &c. for the cauſe aforeſaid, againſt the will of the ſaid *M.* did ſnatch and eat, and neceſſarily trod down and conſumed a little of the graſs aforeſaid there growing, doing as little damage as might be; and the ſaid *M.* did neceſſarily in uſing his ſaid way tread down and conſume on that occaſion a little other graſs there growing with the ſaid carts and carriages, and tore and plowed up with his ſaid carts and carriages on that occaſion the earth and ſoil aforeſaid there, doing as little damage there on that occaſion as he could; *which* are the breaking and entering of the ſaid cloſe called *Hogbill* in which, &c. and the treading down and conſuming of the graſs aforeſaid there growing with his feet and the feet of his ſervants, by walking thereon, and the feeding on, treading down and conſuming the graſs aforeſaid there growing with the ſaid horſes, and the treading down and conſuming other the graſs aforeſaid there growing with the ſaid carts and carriages, and the tearing and plowing up with the ſaid carts and carriages the earth and ſoil aforeſaid there, of which the ſaid *S.* hath above complained againſt him; *and* this he is ready to verify: *Wherefore* he prayeth judgment if the ſaid *S.* ought therefore to have his ſaid action againſt him, &c.

And the ſaid *S.* as to the ſaid breaking and entering of the ſaid cloſe called *Hogbill*, in which, &c. and the treading down and

con-

consuming of the grass aforesaid there growing, with his feet and the feet of his servants by walking thereon, and the feeding on, treading down and consuming the grass aforesaid there growing with the said horses, and the treading down and consuming other the grass aforesaid there growing with the said carts and carriages, and the tearing and plowing up with the said carts and carriages the earth and soil aforesaid there, *replieth*, that he ought not to be precluded from having his said action to be maintained against the said *M.* for the same, by any thing above pleaded by him thereto, *because* he the said *S.* saith, that the said *M.* at the said time in which, &c. at the parish of *W.* aforesaid, broke and entered the said close called *Hog-hill*, in which, &c. and the said grass of the said *S.* late growing there, trod down and consumed with his feet and the feet of his servants, by his and their walking thereon, and fed on, trod down and consumed the said grass with the said horses, and the said other grass of the said *S.* late growing there, with carts and carriages trod down and consumed, and the earth and soil thereof then and there tore and plowed up with the said carts and carriages, of his own wrong, without such cause by him the said *M.* above in his said plea alledged; and this the said *S.* prayeth may be inquired of by the country; *and* the said *M.* doth so likewise. Therefore the sheriff is commanded, that he cause to come here from the day of the holy *Trinity* in three weeks, 12, &c. and

Issue.

Venire *awarded.*

and who neither, &c. to recognize, &c. becase as well &c.

Declaration in trespass for entering plt's free chase and free warren, hunting and killing game, &c.

Cumberland, *to wit*, F. F. late of, &c. was attached to answer to *W. H.* in a plea wherefore he with force and arms entered into the free chase of the said *W.* at *M.* in the county aforesaid, and without his licence and consent in the same did hunt, and did take, kill and carry away hares, conies, pheasants and partridges; and also wherefore he with force and arms entered into the free warren of the said *W.* at *M.* aforesaid, and without his licence and consent there did hunt and take, kill and carry away other hares, conies, pheasants and partridges, and other injuries to him did, to the great damage of the said *W.* and against the peace of our lord the king; *and* whereupon the said *W.* by *T. B.* his attorney complaineth, *that* the aforesaid *F.* on the —— day of —— in the —— year of the reign of his present majesty, and on divers other days and times between that day and the 1st day of *March* in the —— year of the reign of his said majesty, with force and arms, &c. entered into the free chace of the said *W.* at *M.* aforesaid, and without his licence and consent did in the same hunt, and did take, kill and carry away hares, *to wit*, 20 hares, conies, *to wit*, 40 conies, pheasants, *to wit*, 20 pheasants, and partridges, *to wit*, 2 partridges; *and* also that the said *F.* on the said several days and times aforesaid, with force and arms, &c. entered into the free warren of

of the said *W.* at *M.* aforesaid, and without his licence and consent there did hunt, and did take, kill and carry away other hares, *to wit*, 20 other hares, conies, *to wit*, 40 other conies, pheasants, *to wit*, 20 other pheasants, partridges, *to wit*, 20 other partridges; and other injuries, *&c.* to the great damage, *&c.* and against the peace, *&c.* whereupon the said *W.* saith, that he is prejudiced, and hath received damage to the value of 20 *l.* and thereof he bringeth suit, *&c.*

Declaration in trespass for cutting down plt.'s trees, carrying away the timber, &c.

Oxfordshire, *to wit*, } *T.* *H.* late of, *&c.* was attached to answer *T. B.* of a plea, *wherefore* with force and arms he the trees of the said *T. B.* at *C.* aforesaid growing to the value of 30 *l* felled and cut down, and the timber and wood therefrom coming and arising took, carried away and converted to his own proper use, and the underwood and bushes of him the said *T. B.* at *C.* aforesaid growing, of the value of other 30 *l.* cut down and carried away, and other enormities to him did, to the great damage of the said *T. B.* and against the peace of our lord the now king, *&c.* *And whereupon* the said *T. B.* by *R. F.* his attorney complaineth, *That* the said *T. H.* on the 1st day of *January* in the year of our Lord 1772, and on several other days and at several other times between that day and the 23d day of *April* in the year of our Lord 1777, with force of arms, *&c.* the trees of him the said *T. B.* *to wit*, 100 oaks, 100 ashes, 100 elms, 100 beeches, and 100 maples,

maples, growing in ſeveral cloſes, called *K. P. B. &c.* at *C.* aforeſaid, to the value, *&c.* felled and cut down, and the timber and wood, (*to wit*, 200 cart-loads of timber, and 200 cart-loads of wood) therefrom coming and ariſing, took, carried away, and converted to his own proper uſe, and the underwood and buſhes of him the ſaid *T. B.* (*to wit*, 200 cart-loads of underwood and 200 cart-loads of buſhes) growing in the ſaid cloſes, of the value, *&c.* cut down and carried away; and other enormities, *&c.* to the grievous damage, *&c.* and againſt the peace, *&c.* whereby the ſaid *T. B.* ſaith, he is detrimented and hath ſuſtained damage to the value of 40*l.* and thereof he bringeth this ſuit, *&c.*

Declaration in treſpaſs for ſhooting a greyhound, &c.

Leiceſterſhire, *to wit*, } **H. R.* late of, *&c.* was attached to anſwer *B. D.* in a plea, wherefore with force and arms, a certain greyhound bitch, and a certain other bitch of the ſaid *B.* of the price of 10*l.* at *M.* aforeſaid in *M.* aforeſaid in the county aforeſaid, with a gun he ſhot at and killed, whereby the ſaid *B.* not only loſt the ſaid bitches, but alſo certain young whelps, *to wit*, five young whelps of the ſaid greyhound bitch, and certain young whelps, *to wit*, five young whelps of the ſaid other bitch, which died for want of the ſaid bitches to ſuckle them, *to wit*, at *M.* aforeſaid, and a certain other greyhound bitch, and a certain other bitch of the ſaid *B.* late found at *M.* aforeſaid, of the price of 10*l.* he ſhot at,

at, hit, ſtruck, ſmote and wounded, by means whereof the laſt mentioned two bitches afterwards at *M.* aforeſaid died, whereby the ſaid *B.* not only loſt the ſaid two laſt mentioned bitches, but alſo certain other young whelps, *to wit*, five other young whelps of the ſaid laſt mentioned greyhound bitch, and certain other young whelps, *to wit*, five other young whelps of the other of the two laſt mentioned bitches, which afterwards died for want of the two laſt mentioned bitches to ſuckle them, *to wit* at *M.* aforeſaid, and did other wrongs to the ſaid *B.* to the great damage of the ſaid *B.* and againſt the peace of our ſovereign lord the king that now is, &c. *And whereupon* the ſaid *B.* by *J. B.* his attorney complaineth, *that* the ſaid *H.* on the 15th day of *January* in the year of our Lord 1776. with force and arms, &c. a certain greyhound bitch and a certain other bitch of the ſaid *B.* of the price of 10*l.* then found at *M.* aforeſaid, with a gun he ſhot at and killed, whereby the ſaid *B.* not only loſt the ſaid bitches, but alſo certain young whelps, *to wit*, five young whelps of the ſaid greyhound bitch, and certain young whelps, *to wit*, five young whelps of the other of the ſaid bitches, which afterwards, *to wit*, the ſame day and year at *M.* aforeſaid, died for want of the ſaid bitches to ſuckle them; *and* a certain other greyhound bitch, and a certain other bitch of the ſaid *B.* then found at *M.* aforeſaid, of the price of 10*l.* ſhot at, hit, ſtruck, ſmote and wounded, by means

whereof the laſt mentioned two bitches afterwards, *to wit*, the ſame day and year, at *M.* aforeſaid died; whereby the ſaid *B.* not only loſt the two laſt mentioned bitches, but alſo certain other young whelps, *to wit*, five young whelps of the laſt mentioned greyhound bitch, and certain other young whelps, *to wit*, five young whelps of the other of the two laſt mentioned bitches, which afterwards, *to wit*, the ſame day and year, died for want of the two laſt mentioned bitches to ſuckle them, *to wit*, at *M.* aforeſaid, and did other wrongs to the ſaid *B.* to the great damage of the ſaid *B.* and againſt the peace of our ſaid ſovereign lord the king that now is; whereby the ſaid *B.* ſaith, that he is injured and damnified to the value of 10 *l.* and thereof he bringeth ſuit, *&c.*

Plea as to part, Not guilty.

And the aforeſaid *H.* by *S. S.* his attorney cometh and defendeth the force and injury when, *&c.* *And* as to the coming with force and arms, and the whole treſpaſs aforeſaid above ſuppoſed to be done, except the ſhooting at and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, ſaith, that he is not guilty; and of this he putteth himſelf upon the country; *and* the ſaid *B.* likewiſe, *&c.*——— *And* as to the ſhooting at and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, above ſuppoſed to be done, the aforeſaid *H.* ſaith, that the ſaid *B.* ought not to have his aforeſaid action thereof againſt him, becauſe he ſaith, that Sir *W. D.* bart. long before the ſaid time when, *&c.* and at the ſaid time

Iſſue.

As to the reſidue, that the greyhound uſed to haunt a park, and to hunt, &c. *the deer, and being at the time when,* &c. *there for that purpoſe,*

time when, *&c.* was and still is possessed of and in a certain ancient park called *B. Park* in *M.* aforesaid, in which said park long before the said time when, *&c.* and at the same time when, *&c.* were great numbers of deer, of which park the aforesaid *H.* before the said time when, *&c.* and at the said time when, *&c.* was keeper, and had the care and custody thereof; and the said Sir *W.* being so as aforesaid possessed of the said park, the said greyhound bitch at divers times before the said time when, *&c.* was used to haunt the said park and to hunt, chase and drive the deer there, in order to bite, wound and kill them, to the great hurt and damage of the said deer; and at the said time when, *&c.* was in the aforesaid park for the purpose aforesaid; whereupon the aforesaid *H.* as keeper and servant of the aforesaid Sir *W.* and by his command at the said time when, *&c.* in the said park for the preservation of the said deer there, did shoot at and kill the said greyhound bitch there, as it was lawful for him to do; which is the same shoting at and killing of the said greyhound bitch in the said declaration first mentioned, whereof the said *B.* doth above in that behalf complain against him; and this he is ready to verify; whereupon he prayeth judgment if the said *B.* ought to have his aforesaid action thereof against him, *&c.*

Deft. as park-keeper justifies the shooting her.

And the said *B.* as to the said plea of him the said *H.* as to the shooting at and killing of the said greyhound bitch in the said declaration

Replication, that he did it de injuria sua propria absq; tali causa,

claration first mentioned by him the said *H.* committed, above pleaded in bar, saith, that he by any thing above alledged by the said *H.* in pleading ought not to be barred from having his said action thereof against him, because he saith, that true it is, that the said Sir *W. D.* bart. long before the said time when, &c. and at the said time when, &c. was and still is possessed of and in the said park called *B. Park* in *M.* aforesaid, and that within the said park long before the said time when, &c. and also at the same time when, &c. there were a great number of deer, and that the said *H.* before the said time when, &c. and at the said time when, &c. was keeper, and had the care and custody thereof, in manner and form as the said *H.* hath above by his pleading alledged: But the said *B.* further saith, that the said *H.* upon the said 15th day of *January* in the said year of our Lord 1776, at *M.* aforesaid, of his own wrong, and without the rest of the cause by him above alledged, with a gun shot at and killed the said greyhound bitch of the said *B.* in the said declaration first abovementioned, as the said *B.* above thereof complaineth against him; and this he prayeth may be inquired of by the country: *And* the said *H.* likewise, &c. *Therefore* as well to try this issue as the said other issue between the parties aforesaid above joined, the sheriff is commanded, &c.

Issue.

Venire *awarded.*

Hereford-

Herefordſhire, *to wit*, } W. *H.* late of, *&c.* and *M.* his wife, were attached to anſwer *M. P.* widow, of a plea, wherefore the ſaid *M.* the wife of the ſaid *W.* with force and arms, at *Roſs* in the ſaid county of *H.* took and carried away the corn in the ſtraw of the ſaid *M. P.* of the value of 30 *l.* there lately found, and converted and diſpoſed thereof to the uſe of the ſaid *W.* and other injuries to her did, to the great damage of the ſaid *M. P.* and againſt the peace of our lord the preſent king: *And* whereupon the ſaid *M. P.* by *J. B.* her attorney complaineth that the ſaid *M.* the wife of the ſaid *W.* on the 20th day of *Auguſt* in the year of our Lord 1776. with force and arms, at *Roſs* aforeſaid, the corn of the ſaid *M. P.* in the ſtraw, that is to ſay, 50 cart-loads of wheat in the ſtraw, 50 cart-loads of rye in the ſtraw, and 50 cart-loads of mongcorn in the ſtraw of the ſaid *M. P.* of the value, *&c.* there lately found, took, carried away, and converted and diſpoſed thereof to the uſe of the ſaid *W.* and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* wherefore ſhe ſaith that ſhe is injured and hath damage to the value of 40 *l.* and thereof ſhe bringeth this ſuit, *&c.*

Declaration in treſpaſs againſt baron and feme for taking away corn in the ſtraw by the wife, and converting it to the huſband's uſe.

And the ſaid *W.* and *M.* his wife, by *J. K.* their attorney, come and defend the force and injury when, *&c.* *And* as to the coming with force and arms and whatever is againſt the peace of his preſent majeſty, ſay

Plea, as to part Not guilty.

 that

that the said *M.* the wife of the said *W.* is not guilty thereof as the said *M. P.* hath above complained against them; and thereupon they put themselves upon the country; *and* the said *M. P.* doth so likewise. *And* as to the residue of the said trespass above supposed to be done by the said *M.* the wife of the said *W.* the said *W.* and *M.* his wife say, that the said *M. P.* ought not therefore to have her said action against them, because they say that the said *M. P.* before the said time when, *&c. to wit,* on the 19th day of *August* in the year of our Lord 1776. aforesaid, at *Ross* aforesaid, licensed the said *M.* the defendant to take and carry away the said corn, and to convert and dispose thereof to the use of the said *W.* by virtue of which said licence she the said *M.* the defendant afterwards, *to wit,* at the said time when, *&c.* took and carried away the said corn and converted and disposed thereof to the use of the said *W.* her husband, as it was lawful for her to do; which are the residue of the said trespass, of which the said *M. P.* hath above complained against them; and this they are ready to verify: Wherefore they pray judgment if the said *M. P.* ought therefore to have her said action against them, *&c.*

Issue.

As to the residue, that the plaintiff licensed her to take away the corn, &c.

Replication, de injuria sua propria.

And the said *M. P.* as to the said plea of the said *W.* and *M.* his wife, as to the residue of the trespass aforesaid, done by the said *M.* the wife of the said *W.* above in bar pleaded, saith that she the said *M. P.* by reason of any thing by the said *W.* and *M.*

in

in the plea aforesaid above alledged, ought not to be precluded from having her action aforesaid thereof against them, because she the said *M. P.* saith that the said *M.* the wife of the said *W.* on the day and year in the said declaration mentioned, of her own wrong, at *Ross* aforesaid, the said corn in the straw of the said *M. P.* there lately found, took, and carried away and converted and disposed thereof to the use of the said *W.* in manner and form as the said *M. P.* hath above complained; *without this*, that the said *M. P.* licensed the said *M.* the defendant to take and carry away the said corn, and to convert and dispose thereof to the use of the said *W.* her husband, in manner and form as the said *W.* and *M.* his wife in the said plea have above alledged; and this she is ready to verify: Wherefore as the said *W.* and *M.* his wife have above acknowledged the committing of that trespass by the said *M.* the defendant, the said *M. P.* prayeth judgment and her damages aforesaid, occasioned by the committing of that trespass, to be adjudged to her, *&c.* *Traverse.*

And the said *W.* and *M.* his wife say as before, that the said *M. P.* licensed the said *M.* the defendant to take and carry away the said corn and to convert and dispose thereof to the use of the said *W.* her husband, as the said *W.* and *M.* his wife in their said plea have above alledged; and thereupon they put themselves upon the country; *and* the said *M. P.* likewise: *Therefore, &c.* *Rejoinder.* *Issue.*

Hil. 36, 37 *Car.* 2. C. B. 1683.

Declaration in trespass for the recovery of mesne profits. Brownl. Ent. 493.

Yorkshire, to wit, } E. *L.* late of *Marr* in the county aforesaid widow, was attached to answer *G. N* gent. in a plea, wherefore with force and arms, into the manor of *Marr* with the appurtenances, and into 20 messuages, 10 cottages, 400 acres of arable land, 400 acres of meadow, and 400 acres of pasture, with the appurtenances of the said *G.* situate, lying and being in *Marr*, *Bently* and *Thorpe* in *Balne*, she broke and entered, and him the said *G.* from the possession and occupation of the manor and tenements aforesaid, with the appurtenances, from the second day of *October* in the 32d year of the reign of our lord the present king, until the 4th day of *March* in the 35th year of the reign of our said lord the present king, expelled and amoved; and she the said *E.* the whole profits of the manor and tenements aforesaid, from the said 2d day of *October* in the 32d year aforesaid until the 4th day of *March* in the 35th year aforesaid, to the use of the said *E.* had and received; whereby the said *G.* the whole profit, benefit and advantage of the manor and tenements aforesaid by the whole time aforesaid lost, and the said *G.* from the receipt of the profits of the manor and all the tenements aforesaid by reason thereof was hindered, and other injuries to him did, to the great damage of the said *G.* and against the peace of our lord the present king, &c. *And* whereupon the said

ſaid *G.* by *W. D.* his attorney complaineth, that the ſaid *E.* on the 2d day of *October* in the 32d year of the reign of our ſovereign lord *Charles* II. now king of *England*, &c. with force and arms, *&c.* into the manor of [*as before to*] was hindered, and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* Whereupon he ſaith, that he is the worſe, and hath damage to the value of 600*l.* and thereof he bringeth ſuit, *&c.*

Plea.

And the ſaid *E.* by *C. D.* her attorney, cometh and defendeth the force and injury when, *&c.* *And as to* coming with force and arms, or whatever that is againſt the peace of our ſaid lord the preſent king, and alſo the whole treſpaſs aforeſaid, except in one meſſuage, 60 acres of land, 40 acres of paſture, and 20 acres of meadow, with the appurtenances in *Marr* aforeſaid, parcel of the tenements in the declaration aforeſaid ſpecified; and as to any treſpaſs in the ſaid meſſuage, 60 acres of land, 40 acres of paſture, and 20 acres of meadow, with the appurtenances, in and before the 23d day of *January* in the 32d year of the reign of our ſovereign lord *Charles* II. now king of *England*, &c. ſhe the ſaid *E.* ſaith that ſhe is not guilty thereof; and of this ſhe putteth herſelf upon the country; *and* the ſaid *G.* likewiſe, *&c.* *And* as to the ſaid treſpaſs in the ſaid one meſſuage, 60 acres of land, 40 acres of paſture, and 20 acres of meadow, with the appurtenances above ſpecified to be done, the ſaid *E.* ſaith, that the ſaid *G.* ought not to

Not guilty to part.

Issue.

As to the reſidue.

That long before plaintiff had any thing in the tenements, one E. L. *was seised thereof in fee, and devised them to* E. *wife of* T. *earl of* H. *and* M. *late wife of* R. *earl of* S. *and their heirs for ever.*

to have or maintain his said action thereof against her, because she saith that she long before the said *G.* had any thing in the tenements last mentioned, with the appurtenances, *to wit*, on the 10th day of *June* in the year of our Lord 1674, one *E. L.* gent. was seised of the tenements with the appurtenances last mentioned, in his demesne as of fee. And the said *E.* being so thereof seised, before the said time in which, *&c.* to wit, on the 10th day of *August* in the year of our Lord 1674, at *Marr* in the county aforesaid, made his testament and last will in writing, and thereby willed and devised the said tenements with the appurtenances to *E. L.* now the wife of *Theophilus* earl of *Huntingdon*, and *M. L.* deceased, late the wife of *Robert* earl of *Scarsdale*, and to their heirs for ever;

E. L. *dies seised.*

And afterwards, *to wit*, on the day and year last mentioned, there died seised of the said tenements, with the appurtenances in form aforesaid.

E. *and* M. *enter.*

After whose death, *to wit*, on the 24th day of *January* in the 32d year aforesaid, the said *E.* and *M.* into the said tenements, with the appurtenances last mentioned, entered and were thereof seised in their demesne as of fee, by virtue of the said devise; and being so thereof seised, the said

E. *marries* T. *earl of* H.

E. then at *Marr* aforesaid, took for her husband the said *Theophilus*, earl of *Huntingdon*,

M. *marries* R. *earl of* S.

and the said *M.* then and there took for her husband the said *Robert*, earl of *Scarsdale*, whereby the said earl of *Huntingdon* and *E.* in the right of the said *E.* and the said earl of *S.* and *M.* in the right of the said *M.* on the

the ſaid 24th day of *January* in the year aforeſaid, were ſeiſed of the tenements aforeſaid laſt mentioned, with the appurtenances, in their demeſne as of fee. *And* the ſaid *G.* claiming the ſaid tenements, with the appurtenances, by colour of a certain deed of feoffment to him and his heirs thereof made by the ſaid *E. L.* before the day of the making the ſaid teſtament, when nothing of the ſaid tenements, with the appurtenances, ever paſſed into the poſſeſſion of the ſaid *G.* by the ſaid deed of feoffment, after the death of the ſaid *E. L.* to wit, on the 24th day of *January* in the 32d year aforeſaid entered into the ſame tenements, with the appurtenances. *Upon* which ſaid poſſeſſion of the ſaid *G.* thereof the ſaid *E. L.* now defendant, by the command of the ſaid earl of *H.* and earl of *S.* on the ſame 24th day of *January* into the ſaid tenements laſt mentioned, with the appurtenances, re-entered, and the ſaid *G.* from the poſſeſſion and occupation of the ſame tenements, with the appurtenances, then expelled and amoved; and the profits of the ſame tenements laſt mentioned from thence for all the reſidue of the ſaid time in the ſaid declaration mentioned had and received, as ſhe well might, which are the ſame reſidue of the ſaid treſpaſs, whereof the ſaid *G.* above now complaineth; and this ſhe is ready to verify: Wherefore ſhe prayeth judgment if the ſaid *G.* ought to have or maintain his ſaid action thereof againſt her, *&c.*

Colour given to the plaintiff, who enters.

Defendant by command of the earl of H. *and the earl of* S. *enters on plaintiff.*

And

Replication, defendant ad placitum præ l' admitti non debet.

*And the said G. saith that the said E. ought not to be admitted to the plea in bar above pleaded, as to the said messuage, 60 acres of land, 40 acres of pasture, and 20 acres of meadow, because he saith that after the said time in the said declaration mentioned, in which the said trespass in the said declaration above is supposed to be done by the said *E.* heretofore, *to wit*, in the term of St. *Hilary* in the 32d and 33d years of the reign of our sovereign lord *Charles* II. now king of *England*, &c. in the court of our said lord the present king before the then justices of our said lord the king of the bench (the same court being then at *Westminster* in the county of *M.*) the said *E.* by the name of *E. L.* late of *Marr*, widow, and one *W. H. G. G. R. H. M. V. J. H.* and *J. S.* were attached to answer the said *G. N.* in a plea, wherefore with force and arms the manor of *Marr*, with the appurtenances, and 20 messuages, 10 cottages, 400 acres of land, 400 acres of meadow, and 400 acres of pasture, with the appurtenances in *Marr*, *Bentley* and *Thorpe* in *Balne* in the county of *York*, which *B. G.* esq; and *A.* his wife had demised to the said *G.* for a term which was not then passed, they entered, and him the said *G.* from his said farm ejected, and other injuries to him did, to the great damage of the said *G. N.* and against the peace of our said lord the present king; and whereupon the said *G. N.* by *T. P.* then his attorney complained, that whereas the said *B.* and *A.* on the 1st day of *October* in the 32d year of the

In Hil. 32 & 33 Car. II.

Plaintiff as lessee of B. G. *and* A. *his wife brought ejectment against defendant and six others.*

the reign of our ſaid lord the king at *Ma*[illegible] aforeſaid, had demiſed to the ſaid *G. N.* the manor and tenements aforeſaid, with the appurtenances, to have and to hold the manor and tenements aforeſaid, with the appurtenances, to the ſaid *G.* and his aſſigns, from the feaſt of St. *Michael* the archangel then laſt paſt, until the full end and term of five years then next following and fully to be complete and ended; by virtue of which ſaid demiſe the ſaid *G. N.* had entered the manor and tenements aforeſaid, with the appurtenances, and was thereof poſſeſſed, and being ſo thereof poſſeſſed, the ſaid *E. W. G. G. R. M. J.* and *J.* afterwards, *to wit*, on the ſaid 1ſt day of *October* in the 32d year aforeſaid, with force and arms, *&c.* the manor and tenements aforeſaid, with the appurtenances, in form aforeſaid demiſed to the ſaid *G. N.* for a term which was not then paſſed, had entered, and him from his ſaid farm had ejected; and other injuries, *&c.* to the great damage, *&c.* and againſt the peace, *&c.* Wherefore he then ſaid that he was injured, and had damage to the value of 100*l.* and thereof he then brought ſuit, *&c.* *And* the ſaid *E. W. G. G. R. M. J.* and *J.* by *T. L.* then their attorney, came and defended the force and injury when, *&c.* and then ſaid that they were in nothing guilty of the treſpaſs and ejectment aforeſaid, as the ſaid *G. N.* above declared againſt them, and of that they then put themſelves upon the country; and the ſaid *G. N.* then did ſo likewiſe. *And* thereupon the ſaid proceſs was

Who pleaded Not guilty.

Proceſs continued.

was in such manner continued between the parties aforesaid, in the plea aforesaid, by the jurors being respited between them until from the day of *Easter* in 15 days then next following, unless the justices of our lord the king assigned to take the assises in the county aforesaid, according to the form of the statute, *to wit*, on *Saturday* the 5th day of *March* then next before the said day, *to wit*, from the day of *Easter* in 15 days, at the castle of *York* in the county of *York* aforesaid, had first come; at which said assises, on the day and at the place aforesaid held before Sir *William Dolben*, knt. one of the justices of our said lord the king assigned to hold pleas before the king himself, and Sir *William Gregory*, knt. one of the barons of the exchequer of our said lord the king, justices of our lord the king assigned to take the assises in the county aforesaid of *York*, the said issue was tried, and the jurors then and there chosen, tried and sworn to try the said issue, said upon their oath, that *E. W. G. G. R. M. J.* and *J.* were guilty of the trespass and ejectment aforesaid, in manner and form as the said *G. N.* complaineth against them; *And* thereupon it was in such manner proceeded, that it was considered by the same court of the bench, that the said *G. N.* recovered against the said *E. W. G. G. R. M. J.* and *J.* the possession of his said term in the manor and tenements aforesaid, with the appurtenances, then to come; and that the said *E. W. G. G. R. M. J.* and *J.* should be taken, as by the record of said recovery now

Nisi prius.

Trial.

Verdict for plaintiff,

And judgment.

now remaining in the court of the bench aforesaid more fully appeareth: *And* the said *G. N.* further saith, that the said messuage 60 acres of land, 40 acres of pasture, and 20 acres of meadow, whereof the said *G. N.* now complaineth against the said *E.* are parcel of the messuages, lands and tenements mentioned in the said recovery, and not other nor different: Wherefore the said *G. N.* prayeth judgment if the said *E.* during the said term in the said record mentioned ought to be admitted to the said plea, contrary to the said recovery.

Rejoinder, That the earls in right of their wives were seised, and defendant as their servant entered, &c.

And the said *E.* as at first saith, that the said *T.* earl of *H.* and *E.* his wife, in the right of the said *E.* and the said *R.* earl of *S.* and *M.* his wife, in the right of the said *M.* on the 24th day of *January* in the 32d year aforesaid, and continually afterwards, until the 4th day of *March* in the said 35th year of the reign of the lord *Charles* II. late king of *England*, &c. were seised in their demesne, as of fee, of the tenements aforesaid, with the appurtenances last mentioned, in manner and form aforesaid, as the said *E.* above in pleading hath alledged; and that she the said *E. L.* as servant of the said earls and their wives entered into the tenements aforesaid, with the appurtenances, and held the same as she the said *E. L.* above in pleading hath alledged: Wherefore for that the said *G. N.* hath not denied the said matter pleaded in bar by the said *E.* nor answered thereto, the said *E. L.* prayeth judgment,

and

And that the said *G. N.* may be precluded from his said action, *&c.*

Demurrer.

And the said *G.* as to the said plea of the said *E.* above in rejoining pleaded, saith, that the plea in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to preclude the said *G.* from having his said action against the said *E.* to which the said *G.* has no need, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient plea of the said *E.* in this behalf the said *G.* prayeth judgment and his said damages, by the occasion aforesaid, to be adjudged to him, *&c.*

Joinder.

And the said *E.* saith, that her said plea in manner and form aforesaid above in rejoining pleaded, and the matter therein contained, are good and sufficient in law to preclude the said *G.* from having his said action against the said *E.* Which said plea, and the matter therein contained, the said *E.* is ready to verify and prove, as the court, *&c.* And because the said *G.* hath not answered to the said plea, nor any ways hitherto denied the same, the said *E.* as at first, prayeth judgment; and that the said *G.* may be precluded from having his said action against the said *E. &c.*

Continuance.

And because the justices here will advise themselves of and upon the premisses, whereof the said parties have put themselves upon the judgment of the court, before they give judgment thereupon, day is given to the parties aforesaid here, until from the

the day of *Easter* in 15 days, to hear their judgment thereupon; for that the said justices here are not yet, *&c.* *And* because it is convenient that one taxation be made of the damages for the whole trespass in one writ specified: *Therefore* as well to try the said issue above joined to be tried by the country, as to inquire of the damages by occasion of the premisses, whereof the said parties have put themselves upon the judgment of the court as aforesaid, if judgment thereupon should happen to be given for the said G. *It is commanded* to the sheriff, that he cause to come here on the octave of the purification of the blessed *Mary*, twelve, *&c.* by whom, *&c.* and who neither, *&c.* to recognize, *&c.* because as well, *&c.* *At which day* the jury between the parties aforesaid, in the plea aforesaid above by the country to be tried, was thereupon respited between them here until this day, *to wit*, to the said 15 days of *Easter* then next following, unless the justices of our lord the king assigned to take the assizes in the county aforesaid, by form of the said statute, on *Monday* the 9th. day of *March* last past at the castle of *York* in the county aforesaid shall first come. *And now here* at this day cometh as well the said G. as the said *E.* by their attornies aforesaid; and the said justices of assize, before whom, *&c.* sent here their record in these words: *Afterwards*, on the day and at the place within contained, before Sir *Edward Atkins*, knight, one of the barons of the *Exchequer* of our lord the king, and Sir *Robert Wright*, knight, one

Unica taxatio.

Ven fac. tam ad triand. quam ad inquirend'.

Jury respited.

Postea.

one other of the barons of the *Exchequer* of our said lord the king, justices of our said lord the king assigned to take the assizes in the county of *York*, by form of the statute, *&c.* cometh as well the within named *G. N.* as the within written *E. L.* by their attornies within contained; and the jurors of the jury, whereof mention is within made, being demanded, some of them, *to wit*, *G. R. T. P. G. B. R. T. C. R. W. P.* and *J. S.* came and were sworn on that jury; and because the residue of the jurors of that jury did not appear, *Therefore* others of those standing around, by the sheriff of the county aforesaid hereunto chosen at the request of the said *G. N.* and by the command of the said justices, are added a-new, whose names are affiled in the within written panel, according to the form of the statute in such case made and provided; and the jurors so added a-new, *to wit*, *W. P. M. W. J. H. J. D.* and *J. P.* being demanded, also come, who to speak the truth of the within contents, together with the said other jurors first impanelled and sworn, being chosen, tried and sworn, *As to the* issue between the parties aforesaid within joined, whereof the said *E.* said that she is not guilty thereof, they say upon their oath, that the said *E.* is guilty thereof in manner and form as the said *G.* within complains against her; and they assess the damages of the said *G.* by occasion thereof, over and above his costs and charges by him about his suit in this behalf expended,

Al' de circumstantibus.

Verdict for the plaintiff.

pended, to 300 *l.* *And as to* the residue of the trespass within mentioned, whereof the said parties have within put themselves on the judgment of the court, if it happens that judgment therein be given for the said *G.* against the said *E.* the said jury assess the damages of the said *G.* by the occasion of that trespass, over and above his costs and charges by him in and about his suit in this behalf expended, to 200 *l.* and for those costs and charges to 40 *s.* *And* because the justices here will further advise themselves of and upon all and singular the said premisses before they give judgment thereon, day is further given to the parties aforesaid here until on the morrow of the Holy *Trinity*, to hear their judgment thereupon, for that the said justices here are not yet, &c. *At which day* here came as well the said *G.* as the said *E.* by their attornies aforesaid, and because the justices here will further advise themselves of and upon all and singular the premisses aforesaid before they give judgment thereon, day is further given to the said parties here until from the day of St. *Michael* in three weeks, to hear their judgment thereon, for that the said justices here are not yet, &c. *At which day* here cometh as well the said *G.* as the said *E.* by their attornies aforesaid; whereupon all and singular the said premisses being seen, and by the court here fully understood, it seemeth to the said justices that the plea of the said *E.* in manner and form aforesaid above in rejoining pleaded, and the matter therein con-

Contingent damages on the demurrer.

Continuance.

Continuance.

Judgment for the plt. on the demurrer, &c.

tained, are not sufficient in law to preclude the said *G.* from having his said action, as the said *G.* within hath alledged, *It is considered*, that the said *G.* recover against the said *E.* his several damages aforesaid to 500*l.* and the said 40*s.* affessed by the said jury in form aforesaid, and also 28 *l.* to the said *G.* at his request for his said costs and charges by the court here of increase adjudged, which said damages in the whole amount to 530 *l.* and the said *E.* be taken, *&c.*

Affirmed on error.

Declaration in trespass for cutting down a grove which was an ornament and defence to a messuage.

Gloucestershire, *to wit*, } *C. W.* esq; was attached to answer *T. J.* esq; of a plea, wherefore whereas the said *T.* by the space of seven years now last past was and still is seised in his demesne as of fee, of and in one capital messuage called *Sulley*, and of and in a certain grove of timber trees, *to wit*, oaks, ashes, elms and beeches, lying contiguous to the same messuage, with the appurtenances, in the parish of *Lydney* in the county aforesaid, which said grove was not only an ornament, but also a defence to the said messuage against winds, storms and tempests, the said *C.* contriving and intending to deprive the said *T.* of the benefit and advantage of the said grove, with force and arms entered into the said grove, and cut down and carried away trees to the value of 400 *l.* then growing there, and did other injuries to the said *T.* to the great damage of the said *T.* and against the peace of our lord the

the present king, *&c.* *And whereupon* the said *T.* by *E. J.* who is admitted by the court of our lord the king here to prosecute for the said *T.* being under the age of 21 years, as next friend of the said *T.* complaineth, that *whereas* the said *T.* by the space of seven years now last past was and still is seised in his demesne as of fee of and in one capital messuage called *Sulley*, and of and in a certain grove of timber trees, *to wit*, oaks, ashes, elms and beeches, lying contiguous to the said messuage, with the appurtenances, in the parish of *Lydney*, in the county aforesaid; which said grove was not only an ornament to the said messuage, but also a defence to the said messuage against winds, storms and tempests, the said *C.* maliciously contriving and intending to deprive the said *T.* of the benefit and advantage of the said grove, on the —— day of, *&c.* with force and arms entered into the said grove, and cut down and carried away the trees then growing there, *to wit*, 200 oaks, 200 ashes, 200 elms, and 200 beeches, to the value of 400 *l.* in continuing the said trespass at divers days and times from the said —— day of, *&c.* until the day of suing forth the original writ of the said *T.* to wit, the —— day of, *&c.* and other injuries, *&c.* to the great damage, *&c.* and against the peace, *&c.* wherefore he saith, that he is injured and hath damage to the value of 1000 *l.* and thereof he bringeth suit, *&c.*

Plt. an infant by prochein army.

Easter 17 *Geo.* 3.

Common Pleas.

Declaration by an infant in assault and battery.

Surrey, *to wit*, N. C. late of *Ryegate* in the said county, maltster, was attached to answer to *W. W.* in a plea wherefore with force and arms he assaulted the said *W.* at *Ryegate* aforesaid in the said county, and beat, wounded and ill treated him, so that his life was greatly despaired of, and did other wrongs to the said *W.* to the great damage of the said *W.* and against the peace of our lord the king, &c. And whereupon the said *W.* who is an infant under the age of twenty-one years, by *J. W.* (his father) his next friend, admitted by the court here for that purpose, complains that the said *N.* on the fifteenth day of *April* in the year of our Lord one thousand seven hundred and seventy seven, with force and arms, *to wit*, swords, staves, knives and whips, assaulted the said *W.* at *Ryegate* aforesaid, in the county aforesaid, and beat, wounded and ill-treated him, so that his life was greatly despaired of, and did other wrongs to the said *W.* to the great damage of the said *W.* and against the peace of our said lord the king; whereby the said *W.* says that he is injured, and hath damage to the value of one hundred pounds. And thereupon he brings suit, &c.

Plea mo'liter manus imposuit *in defence*

And the said *N.* by *E. S.* his attorney, comes and defends the force and injury,

2 when,



when, &c. and as to the coming with force and arms, or whatever is against the peace of our said lord the king, says he is not guilty thereof; and of this he puts himself upon the country: And as to the residue of the said trespass above supposed to be done, the said *N.* says that the said *W.* ought not to have his said action thereupon against him because he says that at the said time in which, &c. at *Ryegate* aforesaid in the county aforesaid, he the said *N.* was possessed of a certain horse as of his own property, and the said *N.* being so thereof possessed, and —— the wife of the said *N.* then and there riding upon the said horse, the said *W.* at the said time in which, &c. at *Ryegate* aforesaid in the county aforesaid, without any reasonable cause, and against the law of the land, with force and arms struck at and beat the said horse then and there being, the said —— the said wife of the said *N.* then and there riding upon the said horse as aforesaid, by reason of which the said horse was very much startled and frightned, so that the said —— the said wife of the said *N.* was in great danger of being thrown from off the said horse, and the said *W.* then and there several times endeavoured to strike, startle and frighten the said horse; whereupon the said *N.* to prevent the said *W.* from further striking, startling and frightning the said horse, and in defence of his said wife then and there, gently laid his hands upon the said *W.* as it was lawful for him to do, which said gently laying his hands upon the said *W.* for the cause

of his wife, the plaintiff striking, &c. the horse whereon she rode.

cause aforesaid, is the residue of the said trespass, whereupon the said *W.* above complains against him. And this he is ready to verify: Wherefore he prays judgment if the said *W.* ought to have his said action thereupon against him, *&c.*

Geo. Wilson.

Hilary 18 *Geo.* III.

Common Pleas.

Declaration in trespass for killing a pig and a hog.

Sussex, *ss.* W. *R.* late of ——— and *C.* his wife, were attached to answer *J. M.* in a plea, wherefore the said *C.* with force and arms, struck, stabbed and wounded with a spit a * pig and a hog of the said *J.* of the price of forty shillings, at ——— aforesaid, so that the said pig and hog died thereof, and wounded and killed another pig and another hog of the said *J.* of the price of forty shillings there found, and did other wrongs to the said *J.* to the great damage of the said *J.* and against the peace of the lord the king. *And whereupon* the said *J.* by ——— his attorney complains, that the said *C.* on the tenth day of *September* in the year of our Lord 1778, with force and arms struck, stabbed and wounded with a

* In trespass the writ was *quare bona & catalla sua cepit*: The count was of a cow; on not guilty pleaded verdict *pro quer.* but judgment arrested. *R. Raym.* 4.

spit,

ſpit, a pig and a hog of the ſaid *J.* of the price of forty ſhillings at ——— aforeſaid, ſo that the ſaid pig and hog died thereof, and wounded and killed another pig and another hog of the ſaid *J.* of the price of forty ſhillings, there found, and did other wrongs to the ſaid *J.* to the great damage of the ſaid *J.* and againſt the peace of the ſaid lord the king, whereby the ſaid *J.* ſays that he is injured, and hath damage to the value of ten pounds. And thereupon he brings ſuit, *&c.*

To which the defendant pleaded the general iſſue.

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